APPENDIX

Opinions

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

September Term, 1967

January Session, 1968

Nos. 16312 and 16313

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

SALVATORE BATTAGLIA and DAVE EVANS,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

January 9, 1968

Before SCHNACKENBERG, SWYGERT and CUMMINGS, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* In February 1967, defendants Dave Evans, Salvatore Battaglia and Joseph Amabile were indicted for conspiring with each other and with non-

defendant Rocco Pranno to violate the Hobbs Act.[1] The gist of the conspiracy charge was that defendants obtained $48,500 from the Riley Management Corporation by extortion. As required by the statute, the indictment also charged that the conspiracy affected interstate commerce, particularly with respect to that firm's construction of the King Arthur Apartments in Lansing, Illinois. The three defendants were found guilty by a jury. Evans' and Battaglia's appeals were heard together and are disposed of in this opinion. Amabile's appeal has not yet been heard.

Because Evans and Battaglia assail the sufficiency of the evidence, it must be summarized in some detail, viewed in the light most favorable to the Government. The evidence showed that William Riley was president of the Riley Management Corporation and that his company was building the King Arthur Apartments in Lansing, Illinois. Since 1962, defendant Evans had been one of his superintendents of construction and was assigned to the Lansing job in June 1964. At that time Riley and Evans discussed letting the sewer contracts for the Lansing apartments. Riley told Evans to line up subcontractors but to keep it secret "from the boys in Melrose Park," specifically from defendant Amabile (also

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[1] In pertinent part, the Hobbs Act provides (18 U.S.C. § 1951):

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

"(b) As used in this section—

* * *

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

known as Joe Shine) and from Nick Palermo. Riley told Evans that if Amabile and Palermo learned of the project, Riley would quite possibly be forced to use them again as subcontractors. Amabile had been connected with earlier Riley projects and had on several occasions threatened Riley and his family. Evans promised to keep the King Arthur Apartment information from Amabile and Palermo. However, a few days later, Riley was requested to go to the office of the Melrose Park Plumbing Company to meet Nick Palermo. Riley acceded. Both Palermo and Amabile were at the meeting. Palermo insisted on their receiving the plumbing contract for the Lansing project. Amabile said that otherwise he would stop Riley's other apartment building projects underway in Northlake and Westmont, Illinois, and that Riley "would be walking the streets with a candy cane." They told him they knew where Riley's mother lived and where his children went to school and that they had a baseball bat to handle "wise guys" like him.

A few days later, Riley complained to Evans about the leak to Amabile and Palermo. Riley told Evans that the Melrose Park group was not to receive any Lansing work from Riley Management Corporation. In August 1964, Riley instructed Evans to obtain a sewer contractor that was "foreign" to Amabile and Palermo.

Amabile had told Mike DiVito, a sewer contractor, that Amabile could not get the Lansing sewer work if DiVito's name were to be on the contract. Amabile advised DiVito and co-conspirator Rocco Pranno to come up with "a good clean fellow" if they were to obtain the business. They suggested Henry La-Key, an experienced construction foreman. In September 1964, La-Key was hired by Pranno and DiVito as construction superintendent for a brand new firm, Carlson Construction Company, with the title of president.

DiVito said he and Pranno met with Evans and Amabile at Amabile's apartment in mid-September.[2] Pranno explained to Amabile that La-Key was "clean," but Amabile said that before giving Pranno and DiVito the Lansing sewer job he wanted $20,000 in cash. After looking at Evans' figures, DiVito told Pranno that there would be $20,000 in cash above Pranno's and DiVito's costs and profits for the job. Thereupon Pranno told Amabile that he would give him the $20,000 in cash and Amabile accepted the deal. Afterwards, Pranno told DiVito that Evans was Amabile's "guy" and that DiVito should never say anything in front of Evans because it would get back to Amabile.

La-Key testified that he attended a September meeting at Amabile's apartment with Evans, DiVito and Amabile. Amabile said that he was giving the Lansing sewer job to DiVito and Pranno and cared about nothing except getting his $20,000 "off the top." In La-Key's presence, DiVito later relayed the message to Pranno about Amabile's demand for $20,000. Pranno directed La-Key and DiVito to meet with Amabile and Evans at the El Morocco lounge. At that meeting DiVito told Amabile that there would not be enough money in the contract to pay him $20,000 "off the top." Amabile then instructed Evans to figure a way to obtain more money from the job. Evans tore up the original contract and wrote a new contract, raising the price from $150,000 to $199,600.

Pranno gave DiVito and La-Key approximately $13,000 to open a bank account for Carlson. In September 1964, Evans advised Riley that he had selected the Carlson Construction Company as the sewer contractor, that its reputation was excellent, and that it was operated by Henry La-Key. Thereafter, Carlson Construction Company was awarded the sewer contract for about $150,000, to be paid directly to Carlson by a suburban savings and

[2] This may be the same Amabile apartment meeting described *infra* by La-Key.

loan association through pay-out slips issued by Riley's company. Carlson commenced the Lansing work in September or October 1964.

In mid-October, Evans told La-Key that the only contracts Evans let at Lansing were the ones Amabile told him to. Evans told La-Key that he did not want Riley to know that Evans knew Amabile. In November, Amabile told La-Key that Evans worked for Amabile, that Amabile had placed Evans in Riley's office, and that Evans would do whatever Amabile told him to do.

Before making the first draw from the savings and loan association, La-Key told Amabile that the draw would be for $57,000. The next day, Amabile and La-Key drove to the hospital where Evans was a patient. Amabile told La-Key that Amabile was going to give $5,000 to Evans as his cut on the job, instead of $7,500. At the hospital Amabile gave Evans a "wad of bills." Evans reduced the estimate for the first draw by approximately $10,000.

On November 12, 1964, La-Key received the first draw for $47,517.97 from the savings and loan association. He deposited $39,000 in Carlson's payroll account, retained $517 for his wages, and gave $8,000 to Rocco Pranno. Three days later, on Amabile's instructions, he drew out $20,000 from Carlson's account and gave it to Amabile.

In late November or early December, La-Key accompanied Amabile to a farm in Pingree Grove, Illinois, where Amabile introduced La-Key to Battaglia as "running the job for them" in Lansing, Illinois. La-Key heard Battaglia ask Amabile why Evans was getting "that kind of money." Amabile explained that he had made a deal with Evans who had "got us the job." Amabile also said he had promised Evans $7,500 and that he would take care of it. The next morning La-Key mentioned to Evans that he had been at Battaglia's farm, and Evans warned him not to talk about it. Later, Pranno explained to Amabile that La-Key should not have been taken to the farm. When

Pranno attempted to hit La-Key, Amabile stopped him, saying that he had La-Key down to the farm and that "the man [Battaglia] says he is OK."

Prior to the first draw, Pranno, DiVito and La-Key borrowed $5,000 because Carlson had run short of money. Pranno gave $4,500 of this amount to La-Key to deposit for Carlson. This loan was not repaid by January 1965. Later that month Pranno told Amabile about this in DiVito's presence and asked Amabile to locate La-Key so that the loan could be repaid. Several days later Pranno told Amabile that he was going to "the farm" to see "the man" in order to have Amabile obtain $5,000 from La-Key to pay back the loan. At the resulting Battaglia farm meeting, attended by Amabile, Pranno and DiVito, Pranno mentioned that $20,000 from the Lansing sewer job was intended for Battaglia, who then nodded. The second time the $20,000 was mentioned for Battaglia, he said "yes." Battaglia also said:

> " 'Well, I don't think Hank La-Key is such a bad guy, I like him, I like to work with him,' that they had other things coming up, and that they could use him again because he was clean."

He told Pranno that he would see what he could do for him as to the $5,000. On the drive back from the farm, Pranno told DiVito that he thought Amabile was short-changing Battaglia and keeping $10,000 of the $20,000 for himself.

In January 1965, La-Key advised Evans that Carlson did not have enough money to pay for necessary materials. Evans told La-Key not to worry, saying:

> " 'I will talk to Joe Shine [Amabile] and Joe Shine will talk to the man [Battaglia or Riley[3]]. We will see that the money is in the bank for you.' "

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[3] In other instances in the record, the evidence supports a finding that the expression "the man" refers to defendant Battaglia.

That same month Amabile told La-Key to prepare the papers for the second draw. La-Key said that the second draw would be for $60,000. Amabile said this was too high and that he would determine how much it should be and would straighten it out with Evans. That same night, Evans went to La-Key's home and changed prices to bring the draw down to $48,000. Evans told La-Key to present the second draw papers to Sol Meltzer, Riley's financial officer. However, Meltzer refused to authorize this draw. Thereupon, La-Key went to see Amabile. Evans was present while La-Key told Amabile what had happened. The next morning La-Key picked up Evans. They entered Riley's office separately. Riley said that he would authorize a pay-out only when Carlson had paid its suppliers. At this meeting La-Key told Riley that the cost of the job had gone up to $200,000. Evans explained that this was because "complications set in on the job."

La-Key thereupon reported to Amabile that the second draw was still not authorized. Amabile told La-Key to accompany him to Riley's office the next morning. On the following day Amabile told Riley that he had to pay La-Key because "the man" [Battaglia] wanted La-Key paid. Amabile said that otherwise there would be "all sorts of trouble." Because of his fear of physical harm and economic collapse, Riley authorized the second draw of $48,512.48. This was the sum mentioned in the indictment and was deposited by La-Key in a Carlson account. A few days later, Amabile instructed La-Key to draw out $17,000. La-Key thereupon obtained $5,000 in cash and a certified check for $12,000. Amabile insisted upon all cash and ordered Evans to accompany La-Key to cash the check. After the $12,000 check was cashed, La-Key and Evans went to Amabile's apartment, and La-Key gave Amabile the $17,000. Amabile then gave La-Key $5,000, of which La-Key gave Evans $1,000. Amabile told La-Key to take a vacation, and he went to Florida. Shortly thereafter, Evans advised La-Key to return to Chicago, at

Amabile's request. Amabile then complained that La-Key had not been paying Carlson's bills, thus getting Amabile in trouble with Riley and " 'making Dave Evans lose his job. You are taking my man [Evans] right out of Riley's.' " La-Key then told Amabile that there was no money in the Carlson account because Amabile had bled it.

A few days later, La-Key complained to Evans that the Carlson bills were unpaid because of Amabile's actions. La-Key asked Evans why he didn't get out of the business. Evans replied:

> " 'I can't get out. I am in too deep with Joe Shine [Amabile]. I know too much about the other people. * * * I can't quit. I wish I could get back to my own job where I came from.' "

Evans then said that he wished he had never met Amabile and reiterated that he was in too deep to quit.

Sufficiency of the Evidence as to Evans

Evans and Battaglia concede there was enough evidence of a conspiracy to obtain money from Riley Management Corporation by fraud. Evans admits that there was sufficient evidence that he was a party to that conspiracy. He also admits that Amabile used extortion to induce Riley to authorize the second draw. However, Evans contends that there is no evidence to show that the extortion was pursuant to a conspiracy of which he was a member. We reject that contention.

On this record, it is obvious that Evans knew of Riley's fear of Amabile. Although Evans took the stand, he significantly never explained that violence was not contemplated. La-Key was told by Evans that he would talk to Amabile, and that Amabile would talk to "the man" (Battaglia or Riley in this instance; see note 3 *supra*) in order to get the second draw paid. Evans knew that

Riley was unwilling to pay the second draw because Carlson's bills were unpaid, and that Riley was afraid of Amabile. The jury could properly infer that Evans knew Amabile would induce Riley—through fear—to authorize the second draw. After the second draw, La-Key withdrew another $17,000 for Amabile, who then gave La-Key $5,000, who in turn gave Evans $1,000.[4] Even though he may not have spoken to Amabile about the second draw, Evans' own statement to La-Key showed his willingness to take part in a course of action which would cause payment by coercion. It would be unreasonable to suppose that Evans would be so closely associated with Amabile in the scheme to defraud without realizing that Amabile would employ coercive means for obtaining the second draw. Cf. *Pereira* v. *United States,* 347 U.S. 1, 12-13. As in *Lefco* v. *United States,* 74 F.2d 66, 68, 69 (3rd Cir. 1934), Evans has resorted to a conspirator's common contention, made in extremity, that he was a party to a sub-conspiracy not charged in the indictment, but our digest of the evidence discloses evidence quite sufficient to sustain the allegations and finding of his participation in a single conspiracy to obtain money, encompassing extortion as well as fraud.

Evans has relied on *Stirone* v. *United States,* 361 U.S. 212; *United States* v. *Critchley,* 353 F.2d 358 (3rd Cir. 1965), and *Carbo* v. *United States,* 314 F.2d 718 (9th Cir. 1963), certiorari denied, 365 U.S. 861. None is apposite. In *Stirone,* the Court condemned the variance between indictment and proof. As we have seen, the proof here is consistent with the indictment. In *Critchley,* the evidence did not show any threat at the critical time, so that there was no extortion. Here there was ample evidence that co-conspirator Amabile threatened Riley with violence to obtain the second draw, and of course Evans is chargeable with his co-conspirator's acts in furtherance of the

[4] Previously, according to La-Key, Evans had received another "wad of bills" from Amabile.

conspiracy.[5] In *Carbo,* Gibson had legitimate business reasons for his association with the conspirators, whereas Evans' associations with Amabile were clearly for illegal purposes.

Sufficiency of the Evidence as to Battaglia

As noted above, during DiVito's, Pranno's and Amabile's February (or early March) 1965 visit to Battaglia's farm, Battaglia said he liked La-Key and they could use him in other things because he was clean. From this, the jury could infer that Battaglia had embarked "on a criminal venture of indefinite outline" (*United States* v. *Andolschek,* 142 F.2d 503, 507 (2d Cir. 1944)). He was committed to a long-term relationship contemplating the use of La-Key in numerous ventures. Battaglia admitted knowledge of Evans' paid role. He also acknowledged that he was to receive a $20,000 cut from Riley through the Carlson contract at Lansing. Since Battaglia had a stake in the outcome of the conspiracy, even the stringent test of conspiracy liability evolved by Judge Learned Hand in *United States* v. *Falcone,* 109 F.2d 579, 581 (2d Cir. 1940), affirmed, 311 U.S. 205, was satisfied. Battaglia was also the arbiter of disputes among the co-conspirators. Being an associate of Amabile in this venture, Battaglia is properly chargeable with knowledge that his confederate, Amabile, would resort to threats if necessary to extract money from Riley. Battaglia had to "take his chances" as to the methods used by the other co-conspirators. *United States* v. *Andolschek, supra.* As in *United States* v. *Kahaner,* 317 F.2d 459, 468, note 4 (2d Cir. 1963), certiorari denied, 375 U.S. 835, 836, "there was ample evidence to raise a question for the jury whether he had joined in the conspiracy; if the jury so found, he [a co-conspirator who held the bribe money] was criminally responsible for the acts of the other conspirators

[5] *United States* v. *Sansone,* 231 F. 2d 887, 892 (2d Cir. 1956), certiorari denied, 351 U.S. 987.

and his own failure to perform more than a few overt acts would be immaterial." Evidence of knowledge of the details of the plan or of participation of others is not required. *United States* v. *Hickey,* 360 F.2d 127 (7th Cir. 1966), certiorari denied, 385 U.S. 928.

Intent to Affect or Knowledge of Effect on Interstate Commerce

Battaglia insists that it was necessary to find that he intended to affect or had knowledge that the conspiracy would affect interstate commerce, and that there was insufficient evidence of such intent or knowledge. A similar argument was rejected in *United States* v. *Varlack,* 225 F.2d 665, 672 (2d Cir. 1955). As we recently held in *United States* v. *Pranno,* .. F.2d .. (7th Cir. 1967):

> "All that must be proved, however, is that defendants conspired to commit extortion, and that the natural effect of carrying out their threat, whether they were conscious of it or not, would affect commerce."

The District Court charged the jury that "all that is necessary is that the natural effect of the acts committed pursuant to the conspiracy was to affect, delay or obstruct [interstate] commerce," and that the requisite effect on commerce would be found if the jury believed "beyond a reasonable doubt that the defendants' activities as shown by the evidence in any way or degree obstructed, delayed or affected commerce." These instructions were proper under the Hobbs Act. Neither Battaglia nor Evans argues that the extortion would have no effect on interstate commerce. Here, one of the means to accomplish the extortion was the threat otherwise to cause Riley Management Corporation "all sorts of trouble." Many interstate deliveries were being made to its Lansing project. If Amabile's threats to destroy Riley had been carried out, this interstate commerce would necessarily have been obstructed. The Hobbs Act covers such a situation.

United States v. *Pranno, supra.* Furthermore, the Riley company's reserves were depleted by the extortion. Since its business depended, in part, on ability to pay for interstate shipments to the Lansing site, the jury could infer that the extortion would have an effect on interstate commerce. Under the language of this statute (see note 1 *supra*), that is a sufficient nexus with interstate commerce.

Denial of Bill of Particulars

Evans' briefs do not contest the denial of requests Nos. 2 and 3 in his motion for a bill of particulars.[6] However, Battaglia adopted these requests and argues that the District Court erroneously denied them. Specifically, Battaglia asserts that he was entitled to information about the 1962 and 1963 Palermo-Amabile threats to Riley with respect to his Northlake and Westmont, Illinois, projects. However, requests Nos. 2 and 3 provide:

> "2. State the acts or things done by the petitioner [Evans and, by adoption, Battaglia] by which he and the other named and unnamed persons, combined, confederated and agreed together to obstruct, delay and affect commerce as charged.
>
> "3. State the dates, times and places when and where the alleged acts set forth in paragraph 2 above were done or performed."

Even if the District Court had ordered the Government to answer these requests, the Palermo-Amabile threats would not have been revealed. Since Battaglia did not ask for this information below, he may not assert error in this respect. Furthermore, none of the *five* requests in the motion for a bill of particulars covered this subject matter. Therefore, the Government was not required to respond as to it. No abuse of discretion has been shown

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[6] The other three requests were granted and the Government answered them.

with respect to the partial denial of this motion. *Wong Tai* v. *United States*, 273 U.S. 77, 82.

Conspiracy Instruction

During the early portions of the trial, the District Court refused to permit the Government to have the defendants' declarations considered against all of them. Later in the trial, upon motion of the Government, the Court instructed the jury as follows:

> "Before we proceed with the taking of further testimony in this case, I have a direction and instruction to give you, to make to you.
>
> "You will recall during the course of this trial certain testimony was admitted in evidence only as to one or more of the defendants, and you were instructed at that time that such evidence was not then to be considered against any defendant to whom the evidence did not pertain.
>
> "It is now my responsibility, under the law, to instruct you that such evidence is admissible against all of the defendants as evidence in connection with the alleged conspiracy charged in the indictment, whether or not each of the defendants was present when the acts or conversations or incidents testified about were done or carried on.
>
> "You may consider then such evidence as pertaining to all of the defendants."

Citing *United States* v. *Pronger*, 287 F.2d 498 (7th Cir. 1961), Battaglia complains that this instruction was a direction to the jury that a conspiracy had been proven and that each defendant was a member of that conspiracy. However, the last paragraph of this instruction referred to "the alleged conspiracy" and did not tell the jury that the Government had proved a conspiracy. A later

instruction made it plain that the jury could not consider acts and declarations of one conspirator against the others unless the jury found the existence of a criminal conspiracy and that the acts and declarations were in furtherance of the conspiracy.

The *Pronger* case is not controlling here. The terms of the instruction in that case were dissimilar to those here, and any defect in that instruction was apparently not cured by a later instruction. Conspiracy instructions similar to those here were approved in *United States* v. *Bernard*, 287 F.2d 715, 719-20 (7th Cir. 1961), which reinforces our conclusion that the later instruction made the risk of prejudice too slight to justify reversal. *Pronger* has been confined to a situation where the erroneous instruction was in effect given as part of the charge and does not apply where, as here, trial time intervened between the ascribed comments and the final, proper charge. *United States* v. *Allegretti*, 340 F.2d 254, 256 (7th Cir. 1964, *en banc*), certiorari denied, 381 U.S. 911.

Battaglia claims that the jury was not told that it could not consider acts or declarations of a co-defendant made outside the presence of a defendant against the absent defendant unless it found that a conspiracy existed and that the acts and declarations were in its furtherance, but an examination of the transcript shows that such an instruction was given.

Admission of Pre-indictment Threats Made by Amabile and Palermo and Admission of Statements of Co-conspirator Pranno

Battaglia also asserts that the District Court erroneously admitted Riley's testimony of 1962-1963 threats by Amabile and Palermo and erroneously admitted Pranno's statements outside the presence of the defendants. We agree with the Government that the Palermo-Amabile threats were relevant to show the reasonableness of Riley's fear when confronted with Amabile's demand to authorize the second

draw. The District Court carefully instructed the jury that this testimony was limited to that purpose (Tr. 2564).

As to Pranno, the evidence concerning his January 1965 visit to Battaglia's farm, as well as other evidence previously summarized, shows that he was a co-conspirator of Battaglia and Amabile, so that La-Key's and DiVito's testimony concerning Pranno's statements outside the presence of defendants was properly received.

Accomplice Instruction

Battaglia complains that the District Court's accomplice instruction advised the jury that DiVito and La-Key were accomplices. The instruction was as follows:

> "I must tell you, ladies and gentlemen of the jury, that an accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the criminal act charged. On the contrary, the testimony of an accomplice alone, if believed by you, may be of sufficient weight to sustain a verdict of guilty even though not corroborated or supported by other evidence. However, you should keep in mind that such testimony is to be received with caution and weighed with great care. You should not convict any defendant upon the unsupported testimony of an accomplice unless you believe the unsupported testimony beyond all reasonable doubt."

This instruction does not say or imply that DiVito and La-Key were accomplices. The instruction obviously means that if a person is found to be an accomplice, his testimony should be scrutinized with special care. A similar instruction has been proposed by Judge Mathes for the use of the District Courts. 20 F.R.D. 244. Such cautionary instructions were advocated in *United States* v. *Bucur*, 194 F.2d 297, 305 (7th Cir. 1952); *Wainer* v.

United States, 82 F.2d 305, 308 (7th Cir. 1936), affirmed, 299 U.S. 92, and *Ruvel* v. *United States*, 12 F.2d 264, 265 (7th Cir. 1926). Battaglia relies on *United States* v. *Balodimas*, 177 F.2d 485, 487 (7th Cir. 1949), but there the district judge termed two named witnesses as accomplices. Here the jury had already been instructed that it was the exclusive fact finder, and there was sufficient evidence from which the jury could find that La-Key and DiVito were accomplices of the defendants. In this setting, the giving of this instruction was not erroneous.

Restriction of Cross-examination and Refusal to Admit Defense Exhibits

Battaglia assails the District Court's rulings restricting the cross-examination of DiVito, La-Key and Riley; he also assails the court's refusal to receive certain defense exhibits. A study of the cross-examination of these witnesses shows that the District Court allowed defense counsel considerable latitude.

Battaglia's counsel attempted to show that a tax indictment had been dismissed against DiVito in return for his agreeing to be a government witness in this case. Battaglia's counsel cross-examined DiVito extensively about a "deal" to drop the income tax charge if DiVito testified for the Government in the instant case. Later the First Assistant United States Attorney in Chicago testified that the reasons for the Government's dismissal "were that Mr. DiVito's lawyer served us with that motion showing that he had paid his taxes, attaching the check and the receipt and it was obvious that we had no case * * *."[7] He also testified that the Assistant United States

[7] By allowing this testimony, the trial judge acted consistently with the rule that bias or interest of a witness is not a collateral issue, and that extrinsic evidence is admissible thereon. *United States* v. *Lester*, 248 F.2d 329, 334-335 (2d Cir. 1957); 3 Wigmore on Evidence (3rd ed. 1940) §§ 948-950, 1005(b); McCormick on Evidence (1954) § 40, pp. 85-86.

Attorney in charge of the DiVito case was satisfied that proof the tax had been paid in 1964 was a defense to that indictment. If Battaglia's counsel was still not satisfied why the DiVito indictment was dismissed, he could have also called the Assistant United States Attorney in charge of that matter.

The District Court refused to permit the defense to put into evidence the court file and docket entries relating to DiVito's tax case, but they were merely cumulative and did not reveal any "deal." Hence their exclusion was not prejudicial to Battaglia.

Battaglia endeavored to show that La-Key was responsible for the milking of the Carlson Construction and Equipment Company. The defendants were given ample opportunity to examine La-Key regarding the balances in the Carlson bank accounts. The District Court did sustain the Government's objection to certain checks. But Battaglia was not prejudiced by this ruling, for the checks were already reflected by ledger sheets that had been received, thus enabling Battaglia's counsel to argue that La-Key had looted the Carlson Company for his own personal gain. In addition, the checks were being offered in an attempt to contradict a witness on a collateral matter not relating to the $48,500 allegedly extorted. This is impermissible. *United States* v. *Masino*, 275 F.2d 129, 133 (2d Cir. 1960); *United States* v. *Sweeney*, 262 F.2d 272, 276-277 (3rd Cir. 1959). 3 Wigmore on Evidence (3rd Ed. 1940) § 979. Prior contradiction may be shown only on a matter material to the substantive issues of the trial. *Gordon* v. *United States*, 344 U.S. 414, 420, note 13. As noted there, a trial judge has "wide latitude in control of cross-examination, especially in dealing with colateral evidence as to character." 344 U.S. at p. 423.

Next, Battaglia states that he was precluded from showing Riley's purchase price for the Lansing land. It is true that the real estate contract was not admitted by virtue

of the best evidence rule. But earlier Battaglia had shown through Robert Biederman's testimony that the price was about $140,000. Since the disparity between the purchase price and the price used in loan negotiations was already in the record, no prejudice stemmed from this ruling.

Battaglia complains too that Riley's February 5, 1960, bankruptcy petition should have been admitted. Again, the District Court had broad discretion to refuse it as a collateral matter. *United States* v. *Bender,* 218 F.2d 869, 874 (7th Cir. 1955), certiorari denied, 349 U.S. 920. Riley's bankruptcy petition supposedly stated that he owned no stocks or bonds as of that date, but this record does not show that the bankruptcy statement was "obviously perjured" as Battaglia claims. No abuse of the District Court's discretion has been shown in this exclusionary ruling.

Battaglia complains that in Amabile's cross-examination of Riley, Amabile was not permitted to show that Riley's October 5, 1965, statement to the Federal Bureau of Investigation did not refer to the 1962-1963 threats of Palermo and Amabile. However, Riley testified that he had advised the FBI of these threats and added: "I have only read two pages [of the October 5 statement] and I see it in there, yes, sir." If Battaglia's counsel considered the point worth pursuing, he could have called FBI agents Dahlman and Kotsos to prove the contrary. *United States* v. *Borelli,* 336 F.2d 376, 391 (2d Cir. 1964), certiorari denied, 379 U.S. 960.

In his reply brief, Battaglia's counsel contends that the Government should have granted his request for production of DiVito's grand jury testimony.[8] No particularized need for this testimony was shown, nor was there any showing that the ends of justice required production.

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[8] Battaglia's counsel did not request the production of La-Key's and Riley's grand jury testimony.

Therefore, production was unnecessary. See *Dennis* v. *United States*, 384 U.S. 855, 868-875.

As to Battaglia's principal cases cited to show reversible error, in *Alford* v. *United States*, 282 U.S. 687, defense counsel was not permitted to establish that a prosecution witness was in government custody and therefore might expect consideration. In this case, the defense was permitted to show that both DiVito and Riley were in government custody. In *Spaeth* v. *United States*, 232 F.2d 776 (6th Cir. 1956) and *United States* v. *Hogan*, 232 F.2d 905 (3rd Cir. 1956), the defense sought to cross-examine government witnesses who stood convicted of a federal offense, in an effort to show that they expected leniency in return for their testimony. The District Court refused to allow such cross-examination. In this case, Battaglia's counsel subjected DiVito to a lengthy cross-examination about the reasons for the dismissal of the tax evasion indictment against him. This also serves to distinguish *United States* v. *Masino*, 275 F.2d 129 (2d Cir. 1960), where such cross-examination of government witnesses was not permitted.

Gordon v. *United States*, 344 U.S. 414, *United States* v. *Beekman*, 155 F.2d 580 (2d Cir. 1946), and *Meeks* v. *United States*, 163 F.2d 598 (9th Cir. 1947) deal with the exclusion of documentary evidence showing that the prosecution witnesses had been punished for violating federal law and were still subject to the jurisdiction of the court or agency which had imposed the punishment. In each case, the information contained in the documentary evidence tended to prove bias and was not otherwise present in the record. In this case, the District Judge remarked at one point: "I assume that the government is the only one who could voluntarily move for the dismissal [of the tax indictment against DiVito]." This statement, coupled with the extensive cross-examination of DiVito and the examination of the First Assistant United States Attorney in Chicago, told the jury that the indictment had been dismissed on

motion of the government. Defendants do not show that any other significant information was contained in the excluded documentary evidence.

Gordon, Masino, and *Meeks* are further distinguishable because in those cases reversal was based on the cumulative prejudical effect of two or more errors. This case lacks at least one of the errors found in each of those cases.

We approve of the foregoing cases and of the policy of affording the defense wide latitude in showing bias. We do not view the disposition of the issues herein as inconsistent with them.

We have considered Battaglia's other points relating to cross-examination, exclusion of documentary exhibits and instructions and find them to be without merit. In closing this discussion, it should be noted that various criticized evidentiary ruling of the District Court were well within those approved in *United States* v. *Lawinski,* 195 F.2d 1 (7th Cir. 1952). Taken together, the evidentiary rulings here gave these defendants broader latitude than in *Lawinski* and do not amount to an abuse of discretion.

Evans' Character Witnesses

Evans was precluded from showing his good character through four acquaintances. Relying on *Michelson* v. *United States,* 335 U.S. 469, the District Court explained that his evidentiary rulings were based on improperly put questions and on improper foundation. As to some of the questions, this may have been an over-strict application of *Michelson.* However, no foundation was laid to show that these witnesses knew any of the people who lived in the community where Evans resided. Proof of reputation "among a limited group such as fellow employees in a particular building" has been held inadmissible. 335 U.S. at p. 481, note 17; *Williams* v. *United States,* 168 U.S. 382, 397; *Kroot* v. *United States,* 66 F.2d 449, 451 (7th Cir.

1933). Although a more liberal approach to character witness rulings has precedential basis, we adhere to Mr. Justice Jaskson's precept not to "disturb rulings of trial courts" in this troublesome field except in rare instances (335 U.S. at p. 480).

Restriction of Evans' Testimony

Evans argues that the District Court's evidentiary rulings during his testimony denied him an opportunity to present an adequate defense.

It is true that Evans was not permitted to deny certain secrecy admonitions supposedly made about the Lansing project during Riley's June 1964 conversation with Evans, but this was because of the leading and suggestive nature of his trial counsel's questions. To rebut secrecy, Evans' counsel was permitted to elicit that the Riley company had prepared a brochure to promote sales of the Lansing apartments, and that the Hammond *Times* published a story about the project in August 1964.

The rulings not permitting Evans to answer certain questions as to conversations with Amabile, La-Key, DiVito and Pranno were based on the improper form of the questions and lack of proper foundation. These rulings are supportable under rudimentary rules of evidence. Furthermore, Evans was permitted to deny that he met with those persons after his counsel rephrased his questions.

As to the bid sheets, Evans was allowed to testify that there were a signed original and a signed copy of the sewer contract bid sheets, and that the signed original was left in Riley's office, the very points his trial counsel was attempting to elicit.

Since Evans was charged with a January 1965 conspiracy, we cannot state that it was erroneous for the District Judge to consider irrelevant whether Riley held Evans in high esteem in August 1965.

Our study of Evans' testimony shows that he was given great scope in presenting his denials of any part in the conspiracy. The District Court's exclusionary rulings did not jeopardize his defense and were permissible interpretations of the law of evidence.

Evans' Counsel's Inability to Comment on Battaglia's and Amabile's Failure to Testify

Before the defendants presented their witnesses, the District Court instructed their counsel not to refer to the failure of any of the defendants to take the stand. This instruction was of course to protect the Fifth Amendment rights of the two silent defendants, Battaglia and Amabile. The defenses of the three accused were not mutually exclusive. Also, Evans' counsel's closing argument took advantage of Evans' having taken the stand. There was no "showing that real prejudice will result from the defendant's inability to comment" (*United States* v. *Kahn,* 381 F.2d 824, 840 (7th Cir. 1967), certiorari denied, 36 U.S. Law Week 3251), so that severance was not necessitated.

Trial Publicity

Even though defendants successfully objected to sequestering the jury, Battaglia now argues that prejudicial publicity violated his due process rights. In closing argument, his counsel recognized that the trial court repeatedly admonished the jury to ignore news coverage. There is no claim that any jurors read any of the "prejudicial" articles, thus differentiating the case from *Marshall* v. *United States,* 360 U.S. 310. In *Janko* v. *United States,* 366 U.S. 716, the second conviction was reversed because the trial court had not inquired whether the jurors had read a St. Louis *Post-Dispatch* article published during the trial and containing "inadmissible prejudicial information."[9] Here

[9] See Solicitor General's Memorandum filed in the Supreme Court in the *Janko* case.

the jurors were twice asked whether they had seen articles about the case. None admitted having done so. *United States* v. *Accardo,* 298 F.2d 133 (7th Cir. 1962), and *United States* v. *Largo,* 346 F.2d 253, 256 (7th Cir. 1965), certiorari denied, 382 U.S. 904, do not hold that the District Court must always interrogate each juror singly. See *United States* v. *Jannsen,* 339 F.2d 916, 919-920 (7th Cir. (1964).

Battaglia also complains of the presence of a permanent press table inside the bar.[10] The Supreme Court has recently emphatically disapproved of such an installation (*Sheppard* v. *Maxwell,* 384 U.S. 333), so that the District Judges should consider reserving the bar of the court for counsel in the future (384 U.S. at p. 355). However, we do not consider the placement of this press table to constitute reversible error, for this record reveals no "frequent confusion and disruption of the trial" or "constant commotion within the bar" (384 U.S. at p. 355). In our view, the intrusion of the news media into this trial was not so great as to obviate a showing of prejudice (cf. *Estes* v. *Texas,* 381 U.S. 532 and *Sheppard* v. *Maxwell,* 384 U.S. 333). Battaglia has failed to satisfy us that he was denied a free trial because of adverse publicity.

Eavesdropping

The Government's brief reprints an August 18, 1967, letter from the Assistant Attorney General in charge of the Criminal Division of the Department of Justice to the United States Attorney in Chicago. The letter confirms the Department's pre-trial advice to the United States Attorney that there was no electronic monitoring in this case. Cf. *Hoffa* v. *United States,* 387 U.S. 231. Accordingly, it is now academic whether the District Court should

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[10] Such tables have been installed in the various trial courtrooms in the Northern District of Illinois.

have granted a hearing to determine whether electronic eavesdropping had taken place.

No prejudicial error having been shown, the two judgments are affirmed.

SWYGERT, *Circuit Judge,* dissenting. This dissent is based on two independent grounds. First, I do not believe that the Government introduced evidence sufficient to convict Battaglia and Evans of the crime charged against them. Second, although my views on the sufficiency of the evidence would dictate a reversal without remand, a multitude of prejudicial errors occurred which in combination, if not singly, precluded the defendants from receiving a fair trial. Consequently, on the basis of these trial errors, the case should be remanded for a new trial regardless of the insufficiency of the evidence.

I.

SUFFICIENCY OF THE EVIDENCE.

Accepting the evidence in the light most favorable to the Government, the evidence unquestionably showed that Amabile, Pranno, DiVito, Evans, and LaKey devised and executed a scheme to defraud the Riley Management Corporation by using the Carlson Construction & Equipment Company as a facade so that moneys meant for construction purposes could be diverted to those participating in the scheme. But this scheme was not the one charged in the indictment. The evidence also unquestionably showed that Amabile threatened Riley for the purpose of obtaining money. The record is barren, however, of any evidence, direct or circumstantial, to sustain the charge that Battaglia and Evans conspired with Amabile "to obstruct, delay and affect commerce" in the movement of materials for the construction of the Riley dwelling units by means of extortion.

In early 1964, the Riley Management Corporation began planning the construction of an apartment building at Lansing, Illinois. In June of that year, William Riley, president of the Riley company, requested his construction superintendent, Dave Evans, to start lining up contractors for the Lansing project, but asked Evans to keep the project "secret from Joe Shine [Amabile] and Nick Palermo." A few days later Riley, at Amabile's request, met Amabile and Palermo at the latter's Melrose Park plumbing company office. Riley testified concerning this meeting:

> Nick Palermo asked me if I was going to build a project in Lansing, Illinois. I told Mr. Palermo that I was and Mr. Palermo asked me when he was going to get the blueprints so that he could figure the work. I told Mr. Palermo that I did not plan on giving him the work. I told Mr. Palermo that he was behind on his existing projects and with the efficiency that we we now enjoying, it was ridiculous to give him this project.
>
> Joe Shine told me that I wasn't going to give it to anyone else other than them and they asked me basically what the hell I was trying to pull, . . .
>
> * * *
>
> Joe Shine told me that if I didn't give them the work in Lansing, that he would stop the project in Northlake and in Westmont, Illinois. They told me that I had to use them, that if I didn't use them, that they would put me out of business. I told Nick and Joe that they were now in the process of putting me out of business, the way they were doing it. I was told not to be a smart punk.
>
> Joe Shine told me I shouldn't be a wise guy. Joe Shine told me he knew how to handle wise guys and that I would be walking the streets with a candy cane.
>
> * * *

> Joe Shine told me he knew where my mother lived. He would—he told me that he knew where my kids went to school and they had a baseball bat to handle wise guys like me.

After this meeting, Riley gave Palermo the plumbing contract for the Lansing project.

In late July or early August 1964, Amabile met Mike DiVito, a sewer contractor, and Rocco Pranno in the latter's D'Or Supper Club in Stone Park, Illinois. Upon learning from Amabile about the Riley project in Lansing, DiVito asked if he could obtain some of the sewer work. Amabile said "it was possble," but that he didn't want DiVito's name on the contract. A few days later Amabile told DiVito and Pranno that if they came up with "a good clean fellow," they could get the sewer contract for the Lansing project. Shortly after this conversation, DiVito and Pranno persuaded Henry LaKey (who had been a foreman on sewer construction jobs) to work for them if they succeeded in getting the Lansing contract.

In mid-September, DiVito, Pranno, Evans, and Amabile met in the latter's apartment in Northlake, Illinois. Pranno told Amabile that he and DiVito "had a fellow to do the work for us called Hank LaKey and that he was clean." Amabile replied, "Okay, that's fine . . . [but] before I give you this job, I want $20,000 in cash."

During this period, DiVito and Pranno hired LaKey to work for them for $200 per week plus a ten per cent bonus upon completion of the job. They told LaKey they were starting a "new corporation" to be called the Carlson Construction & Equipment Corporation and they would like to have him put "on the paper as president" of the company. In contemplation of giving the sewer work to DiVito and Pranno, Evans apparently drafted a written contract to be signed by Carlson Construction. The contract that Evans originally drew up, however, was un-

satisfactory to DiVito and Pranno because they had decided, after looking over the plans, that there would be insufficient proceeds from the job to pay Amabile the twenty-thousand dollars he had demanded "off the top." At this point, Amabile told Evans to figure a way to get more money out of the job. Evans rewrote the contract raising the price approximately forty to forty-five thousand dollars. After looking at the plans and specifications and seeing the high price of the job pursuant to the rewritten contract, DiVito informed Pranno that "there would be $20,000 in cash above our costs and profits." Pranno then told Amabile in the presence of DiVito and Evans that he would give him the twenty thousand dollars. Amabile replied "Okay, it's a deal." In accordance with their previous discussion, Pranno, DiVito, and LaKey formed the Carlson Construction & Equipment Company. DiVito and Pranno each received forty-five per cent of the stock and LaKey the remaining ten per cent.

Sometime in September, Riley asked Evans whether he had lined up a sewer contractor. Evans said that he had obtained an excellent contractor, Carlson Construction, operated by a man named LaKey. Evans told Riley that he "had looked into Carlson Construction's reputation, it was excellent, and . . . [he] felt quite confident that this man could do a good job." Carlson Construction was given the contract under an arrangement whereby Lawn Savings & Loan Association was to pay Carlson upon receipt of payment slips issued by the Riley company. Carlson Construction commenced the sewer work in September or October, 1964.

Early in November, Amabile instructed LaKey to get the necessary papers ready for making the first "draw." After preparing the papers, LaKey went to see Amabile at the El Morocco, a night club operated by Amabile in Northlake, Illinois. LaKey testified: "Joe Shine [Amabile] asked me how much the draw was for. I told him $57,000.

. . . Joe Shine said he would get a hold of Dave Evans and straighten this out." Within a day or two, LaKey and Amabile went to see Evans, who was a patient in Illinois Masonic Hospital. Before they saw Evans, Amabile told LaKey that Evans was going to receive $5,000 as his cut, not $7,500 as originally planned. At the meeting, Amabile gave Evans a "wad of bills." Evans then looked over the papers for the first draw and crossed out a number of items. After the papers had been retyped, reflecting a reduction of $10,000 in the draw, Evans approved the papers and told LaKey to take them to Riley's office. On November 12, LaKey received a check for $47,517.97 from Lawn Savings & Loan Association based on a pay-out slip approved by Sol Meltzer, Riley's comptroller. LaKey deposited $39,000 in the Carlson Construction payroll account. Of the remaining $8,517, LaKey retained $517 and gave Pranno $8,000. Three days later, at Amabile's direction, LaKey withdrew $20,000 in cash from the Carlson Construction account which he gave to Amabile.

In January 1965, Amabile told LaKey to prepare the papers for a second draw. LaKey got the papers ready and showed them to Amabile who asked how much the draw was for. LaKey replied, "$60,000." Amabile thought that this figure was too high, saying, "I don't want that kind of money taken out of the account at this time. . . . I will tell you what to draw." He also said that he would straighten it out with Evans. That same day, Evans reduced the figure to $48,000 and, after approving the papers, told LaKey to present them to Meltzer for the payment slip. When LaKey presented the papers covering the second draw for approval, Meltzer refused to authorize the request.

LaKey immediately went to see Amabile, relating in Evans' presence what had happened. At Amabile's instruction, Evans and LaKey went to see Riley the next day. Pursuant to Evans' request, however, they entered

the office separately. When LaKey told Riley that he was there to get the second draw, Riley replied that Carlson Construction's bills were not being paid, and that he would authorize a payment only when LaKey had satisfied these obligations. During the conversation, LaKey told Riley that the cost of the job had gone up from $120,000 to $200,000. When Riley asked Evans to explain why the price had been increased, Evans told Riley, "There's complications set in on the job and we had to raise the price up to get the job done."

LaKey reported to Amabile that Riley had refused to authorize the second draw. Amabile replied: "You be here tomorrow morning. I'll personally go with you to the office myself. I'll get this straightened out once and for all." The next morning LaKey and Amabile arrived at Riley's office and walked in unannounced. Amabile asked Riley why he did not pay LaKey. Riley said he couldn't authorize the draw until LaKey had paid his bills. Amabile then told Riley: "I don't care nothing about that. The man's got his money coming, Bill, I want you to pay his money." At that point, Amabile and Riley went to the back of the office and commenced a conversation during which LaKey "seen a lot of arms moving by Joe Shine," who was doing most of the talking. Then Amabile walked towards LaKey, gave him a wink, laughed, and said, "You'll get your money now." Before leaving, Amabile turned to Riley and said: "Don't forget, Bill, I want you to pay this man. I want you to pay him now. You know what I mean." On the way back to the El Morocco, LaKey asked Amabile how he was able to tell "a big man like Riley" what to do. Amabile put up his fist and said, "I got this son of a bitch right here, . . . He's afraid of me."

On the witness stand, Riley gave this version of the meeting:

> Mr. Shine told me that I had to pay this man, that this man was a friend of theirs; that I was expected

to pay them; that if I didn't pay them all sorts of people would get mad.

I told Joe that it would be foolish for me to make this payment; that they were just pushing this company to ruination; that it just was absolutely ridiculous to pay this man and that I did not want to pay him.

* * *

Mr. Shine told me that I had no choice on this matter; that I had to pay this man; that the man wanted him paid.

I told him that this was silly. I had a big loan pending with Equitable Life and this thing would, it could destroy everything that we were trying to build up. I told him that, in fact I begged him not to have to pay him. He told me that I had to pay him.

* * *

He told me the man said I had to pay him and he told me if I didn't pay him there would be all sorts of trouble, and there was no sense in me making this trouble for myself so I better pay him because he was a friend of theirs.

Riley further testified that he subsequently authorized the payment because he was afraid; that he had been subjected to previous threats of physical harm to his family and his employees and ruination of his company by Amabile and Nick Palermo. Shortly after this meeting, LaKey deposited a $48,512.48 check, received from Meltzer, in the Carlson Construction bank account. Later Amabile told LaKey to withdraw $17,000 from the account. Of this amount, Amabile gave LaKey $5,000; LaKey in turn gave Evans $1,000.

A close analysis of the evidence in this case is essential to determine whether the Government proved the crime

charged. The precise charge was a conspiracy to extort money from Riley. The gist of the crime of conspiracy is an agreement between two or more people, rather than the resultant action undertaken pursuant to the agreement. Since the agreement is the gist of the crime, the agreement itself must be proved either by direct or circumstantial evidence. If circumstantial, the circumstances must be such as to warrant the jury in finding that the alleged conspirators had "some unity of purpose, some common design and undertaking, some meeting of minds in an unlawful arrangement. . . ." *Shannabarger v. United States,* 99 F.2d 957, 961 (8th Cir. 1938).

The conspiracy charged in this case was allegedly aimed at obstructing and delaying the interstate movement of materials and supplies required for Riley's Lansing project. That obstruction and delay was to result from the extortion of $48,500 from the Riley Management Corporation by engendering fear of bodily and economic injury in William Riley.

There is a substantial question concerning the admissibility of many statements testified to by DiVito, LaKey, and Riley, which were neither relevant to the crime charged nor binding on absent alleged coconspirators. Assuming for the sake of argument, however, that all their testimony was relevant and admissible, I still do not believe that the evidence shows either that Evans agreed with Amabile and Pranno or that Battaglia agreed with Amabile and Pranno to commit the extortion charged in the indictment.[2]

The evidence with regard to Evans shows that the only agreement or "common design and undertaking" to which he was party was one to bilk the Riley company by means of fraud and deceit out of money earmarked

[2] There was no proof that Evans and Battaglia had any connection with each other except through common acquaintance with Amabile, DiVito, Pranno, and LaKey.

for the Lansing job. Consistent with a scheme to defraud, DiVito and Pranno kept in the background, Amabile expressly ordering DiVito to stay off the job. A "good, clean fellow," LaKey, was recruited to act through the facade of Carlson Construction. There was constant effort among the conspirators to make sure that Riley was kept in the dark about Amabile's connection with Carlson Construction. Both draws were misrepresented to Riley as being legitimate expenditures. All these facts, as well as many others in the record, are indicia of fraud rather than extortion. Fraud is marked by misrepresentation, deception, and deceit. Extortion is direct and brutal—the very antithesis of fraud.

The Government argues that the most conclusive direct evidence showing Evans to be a "willing participant" in the conspiracy is a statement made by him to LaKey when LaKey expressed anxiety about paying his bills. Evans said: "I will talk to Joe Shine and Joe Shine will talk to the man. . . . We will see that the money is in the bank for you." (This statement was made in January 1965, after the first draw and after Amabile had gotten his $20,000 "off the top.") Subsequent to Evans' statement, arrangements were undertaken for the second draw. Again attempts were made to deceive Riley. Evans decreased the amount of the draw prepared by LaKey. When LaKey failed to get the draw approved, Evans accompanied LaKey to Riley's office, but by prearrangement they entered the office separately. Evans told Riley on this occasion "there's complications set in on the job and we had to raise the price up to get the job done."

The foregoing facts, all involving conduct by Evans occurring after his statement relied on so heavily by the Government, suggest only deceptive conduct on his part, rather than complicity in a scheme to extort. Moreover, these same facts highlight the individual action of Amabile in resorting to extortion. When Amabile realized that

the subterfuge was no longer working as it had in the past, he decided to take things in his own hands, and, unknown to the others, unmask the fraud and threaten Riley in order to get an approval of the second draw.[3]

The Government also argues that the creation of Carlson Construction merely "put a velvet glove on the iron fist with which Amabile and 'The Man' had terrorized Riley in the past." Although past extortion of Riley had been used to obtain contracts, the Government contends that in the present situation, Amabile, with Evans' cooperation, did not have to resort to force to obtain the sewer contract; instead Amabile could wait and exert his pressure to obtain the money obligated by the contract.

In fact, however, this argument reveals the clear import of the evidence in this case—that a fraudulent scheme was practiced on Riley. When Riley flatly refused to approve the second draw even though Evans had tried to persuade him in the other direction by making a bald misrepresentation, Amabile unilaterally, and perhaps spontaneously, reverted to his more accustomed role, that of an extortionist. This unilateral action on the part of Amabile cannot be transformed into a prior agreement with

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[3] This use of the phrase "the man," like some of its other uses, (*See infra* notes 5-7 and accompanying text) fails to identify the person being referred to. The majority recognizes that in this instance the phrase could refer to either Battaglia or Riley. Yet they conclude by implication that Evans was referring to Riley, stating, "The jury could properly infer that Evans knew Amabile would induce Riley—through fear—to authorize the second draw." If he was instead referring to Battaglia, the most damaging aspect of the Government's case against Evans is neutralized. Because the phrase "the man" is so indefinite and ambiguous, only speculation and surmise could supply the purport of a reference to Battaglia. But the same speculation and surmise is necessary to support the majority's rationale that the statement reflected Evans' awareness that Amabile was going to exercise extortion on Riley.

Evans and Battaglia to extort as the Government charged in the indictment.[4]

The slender reed on which the Government depends to demonstrate an agreement to exort between Amabile and Evans is not even present with respect to Battaglia. The evidence touching upon Battaglia's connection with the crime charged may be summarized as follows. Riley testified that although he had never met Battaglia, he had seen him once in early 1964 in Amabile's night club. DiVito testified that he saw Battaglia talk to Amabile in October of that year in Amabile's club. LaKey testified that in late November or early December, he was with Amabile at Battaglia's farm in Pingree Grove, Illinois, where he was introduced as "Hank LaKey running the

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[4] The record indicates that prior to the second draw Evans told LaKey that the only contracts Evans would "let out here [Lansing] are the ones Joe Shine tells me." Evans' deep involvement with Amabile is further indicated by a statement Evans made to LaKey after the second draw when he said: "I can't get out. I am too deep with Joe Shine. I know too much about the other people." The day before this conversation, LaKey had been called back from Florida to a meeting attended by Amabile and Evans. LaKey described what took place:

> I got in a conversation with Joe Shine first as soon as I got in the Club, he hollered and told me, he said, "You're not paying the bills, you're not taking care of the job. You got me in trouble with Riley. Riley's in trouble. You're making Dave Evans lose his job. You're taking my man right out of Riley's. I don't know what is going on. You are causing nothing but trouble."

In sum, although this testimony confirms Evans' association with Amabile, it just as strongly suggests that their association was in furtherance of a scheme to defraud. At the time of the meeting testified to by LaKey, Evans was unaware that Amabile had committed extortion upon Riley to obtain the second draw. The only inference that can properly be drawn from LaKey's testimony, therefore, was that Amabile was attempting to keep the ruse going by conveying the impression to Evans that the scheme to defraud was still in operation.

job for them in Lansing, Illinois." While there, he heard Battaglia ask Amabile why Evans was "getting that kind of money." Amabile replied: "I made a deal with the man. The man got us the job. . . . I promised him $7,500, I'll take care of it." DiVito testified that in February or March 1965, he went with Pranno to Battaglia's farm. Amabile came a few minutes later and the three of them awaited Battaglia's arrival. According to DiVito, Pranno said in Amabile's and Battaglia's presence, "You know about this Riley deal in Lansing where we got Hank LaKey to set up the company and do the work for us and figure $20,000 in for you?" Battaglia nodded. Pranno and Amabile then argued whether Amabile had taken LaKey away from Pranno. Battaglia interceded by saying: "Cut it out, you fellows. Keep it down." DiVito further testified:

> Then Jim Pranno continued to talk and he says, "You know we had to borrow $5,000 to keep this job in Lansing going and now I can't find LaKey, and you know there was $20,000 in this deal for you." Mr. Battaglia nodded, says "Yes." And then Jim Pranno continued and says, "I want to know what Joe Shine is doing to me. I want you to tell Joe Shine to get that $5,000 from LaKey so that we can pay back this loan," and Jim Pranno continued on to say that Hank LaKey was a no good s.o.b. Then Mr. Battaglia says, "Well, I don't think Hank LaKey is such a bad guy, I like him, I like to work with him," that they had other things coming up, and that they could use him again because he was clean. And after a minute or so, a pause of about a minute, then Mr. Battaglia got up out of his chair and said, "Rocky, I'll see what I can do for you."

On this record there is absent any evidence, direct or circumstantial, demonstrating that Battaglia knew that

money was to be extorted from Riley or that threats were to be made to Riley by Amabile. Nor is there any evidence that Riley feared Battaglia or that Battaglia received any of the money extorted from Riley. Finally, there is no evidence that Battaglia agreed with Amabile, Pranno, or Evans to commit the crime charged against them. Yet the Government argues in its brief:

> Just as Evans acted at Amabile's direction, Amabile worked at the direction of the defendant Battaglia. Amabile was the muscle while Battaglia was the brains, setting policy and settling disputes. His veil of secrecy was his supposed anonymity, known to a few as "The Man." When one wanted to see "The Man," one went to "The Farm."
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> From the foregoing evidence a jury could infer that Battaglia had a real interest in the outcome of the Lansing project, that he was participating financially in Carlson Construction's contract and that all other co-conspirators acted at his direction, directly as with Amabile, or indirectly, as with Evans.
>
> From his own mouth Battaglia admitted knowledge of Evans' role and that Evans was being paid. Battaglia knew of La-Key's role and that Carlson Construction had the contract on the Lansing project. He knew that La-Key was being used as a front, because "he was clean." With Battaglia's knowledge of the foregoing, the jury could conclude that he was a participant in the conspiracy to place Riley in such a position that when Riley learned that Carlson Construction was in fact Amabile and Battaglia, he would authorize payment of the money in the escrow account, not because of the contract, but because he feared Amabile and "The Man."

These inferences which the Government seeks to draw, some of them non sequiturs, can rise no higher than speculation and surmise.

Much of the Government's case against Battaglia rests on identifying him as "The Man." But of the numerous instances of the use of that phrase in the record, many refer not to Battaglia, but rather to LaKey,[5] Evans,[6] and Amabile.[7] Battaglia's financial stake in the alleged conspiracy to extort is demonstrated, according to the Government, by his two nods and saying "Yes" at the mention of "$20,000 in for you." Although Battaglia's responses to the mention of the money indicate that he was not a stranger to the Lansing venture, they are in no way probative of his complicity in a conspiracy to extort. The force of the Government's argument in this regard is largely diminished by the fact that "the Brains" [Battaglia], who was supposedly "setting policy," had to be reminded twice by Pranno that he had money coming to him.

Reliance is placed by the majority on two Second Circuit cases, *United States* v. *Andolschek,* 142 F.2d 503 (2d Cir. 1944), and *United States* v. *Falcone,* 109 F.2d 579 (2d Cir.), *aff'd,* 311 U.S. 205 (1940). *Andolschek* is cited in support of the proposition that "Battaglia had 'embarked on a criminal venture of indefinite outline' " and therefore, "had to 'take his chances' as to the methods used by the other co-conspirators." The full text of the passage, however, is more illuminating:

> It is true that a party to a conspiracy need not know the identity, or even the number, of his confederates;

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[5] When Amabile went to see Riley concerning the second draw, Amabile said, "*The ma[illegible]'s* got his money coming, Bill, I want you to pay his money." (Emphasis added.)

[6] When LaKey and Amabile were going to visit Evans in the hospital, LaKey said, "Joe, the deal was for $7,500 for *the man.*" (Emphasis added.)

[7] When Riley first met Amabile and Palermo in April 1962, Riley testified, "Mr Shine who I had just met struck his face in my face and told me he was *the man* in Northlake." (Emphasis added.)

> when he embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them. *Nevertheless, he must be aware of those purposes, must accept them and their implications, if he is to be charged with what others may do in execution of them. United States* v. *Andolschek, supra* at 507. (Emphasis added.)

And despite the majority's assertion that the "stringent test of conspiracy liability" set forth in *Falcone* was met by the Government here, that case condemned guilt by mere association.

> There are indeed instances of criminal liability of the same kind, where the law imposes punishment merely because the accused did not forbear to do that from which the wrong was likely to follow; but in prosecutions for conspiracy or abetting, his attitude towards the forbidden undertaking must be more positive. It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that others will make an unlawful use; he must in some sense promote their venture himself, make it his own, have a stake in its outcome. The distinction is especially important today when so many prosecutors seek to sweep within the drag-net of conspiracy all those who have been associated in any degree whatever with the main offenders. *United States* v. *Falcone, supra* at 581.

There can be no doubt that Amabile and Battaglia associated together, but, as the court stated in *Falcone,* mere association is insufficient evidence of guilt to support a conviction.

II.

Trail Errors

In urging reversal, Battaglia and Evans point to a number of trial errors which they claim not only unduly prejudiced them, but also prevented them from receiving a fair trial. Contrary to the majority's disposition of these contentions, I believe that such errors did occur.

Because of my views on the sufficiency of the evidence, however, I do not believe that an extended discussion of the trial errors is either necessary or appropriate. I only refer to them as they reflect upon the conduct of this trial as a whole, the most striking aspect of which was the unfavorable climate in which the proceedings were conducted. Perhaps no single error occurring outside that climate would be sufficient to require a reversal; however, their cumulative effect, as exemplified by the three errors that will be discussed in detail, leads inevitably to the conclusion that the defendants were denied a fair trial.

A. *Pre-conspiracy Threats*

The indictment charged that a conspiracy among the defendants to violate the Hobbs Act began "in or about July, 1964." Yet, William Riley, the victim of the alleged extortion, was permitted to testify over objection about threats made to him in 1962 and 1963 by defendant Amabile and Nick Palermo. These threats related to Riley's proposed building project in Northlake, Illinois and the subsequent payment of $30,000 to Amabile. Riley also testified about threats made by Amabile and Palermo in 1963 in regard to plumbing work at a Riley building project in Westmont, Illinois. Palermo on that occasion said he "would bury Hubley," Riley's construction superintendent, and Amabile said he "would hammer the nails on the coffin." Amabile made other threats to Riley at that time. Purportedly, this testimony was admitted for the purpose of showing the basis of Riley's fear of

Amabile in January, 1965. There was ample testimony by Riley, however, of threats made by Amabile after the commencement date of the alleged conspiracy.

According to the majority, the testimony of these threats was "relevant to show the reasonableness of Riley's fear when confronted with Amabile's demand to authorize the second draw. The District Court carefully instructed the jury that this testimony was limited to that purpose." Although I agree that proof of the reasonableness of an extortion victim's fear by testimony of prior threats is generally permissible, the testimony of threats made by Palermo, who was not even charged as an unindicted coconspirator, was irrelevant for any purpose. Moreover, I am at a loss to find the "careful instruction" referred to by the majority. Because the testimony of threats by Palermo was both irrelevant and inflammatory, the defendants were prejudiced by the district court's failure to instruct the jury to disregard that testimony. *Cf. United States* v. *Critchley,* 353 F.2d 358 (3rd Cir. 1965).

B. *The Accomplice Instruction*

The accomplice instruction was improper because the district judge, in his definition of an accomplice, for all practical purposes told the jury that the crime charged had in fact been committed. In so doing, he invaded the province of the jury. This kind of an instruction would be proper in a prosecution where the alleged accomplice admitted his participation in a conceded criminal offense. In that situation, an instruction like the one given here correctly delineates the weight to be accorded the testimony of the accomplice as that testimony tends to implicate others in the crime that has been committed. In the instant case, however, the crucial question was not who the participants of a conceded crime were, but whether a conspiracy to violate the Hobbs Act, the crime charged, had been formed by the alleged conspirators.

Because the instruction did not explicitly leave open the question whether any of the witnesses were accomplices, the jury may reasonably have interpreted the instruction as a direction from the judge that the crime charged had been proved. To avoid this substantial risk of prejudice, the instruction should have been framed so that the jurors were unequivocally informed that they were the sole judges of whether any witness was in fact an accomplice. Such modification would have cured the instruction's vice—the implied assumption that the alleged conspiracy was a proven fact. *See Gordon* v. *United States,* 353 F.2d 9 (5th Cir. 1965).

C. *Evans' Character Witnesses*

Evans sought to elicit testimony of his good character through four witnesses. Conceding the somewhat inept manner in which this undertaking was attempted by Evans' counsel, the district judge's treatment of these efforts was nevertheless unduly restrictive. Throughout the course of defense counsel's efforts to question the character witnesses, Government counsel interposed objections to all questions directed to an assessment of Evans' general reputation as an honest, truthful, and law-abiding citizen. On almost every occasion, these objections were indiscriminately advanced by the simple statement, "I object." With equal regularity, the judge sustained the objections, only rarely intimating the reasons for this action.

At one point, Evans' counsel, obviously frustrated and bewildered, asked the judge to elaborate on his prior statement that "the question is improperly put." In response, the judge should have either demanded that Government counsel frame his objections in more concrete and specific terms or sustained the objections in a manner to convey to defense counsel the reason for his rulings. His failure to do so worked an unnecessary

and prejudicial hardship on Evans' counsel's efforts to elicit character testimony from his witnesses.

In addition, some of the court's rulings sustaining the Government's objections were erroneous. On more than one occasion, a foundation was laid to qualify the witness, and the question posed to the witness was properly phrased. The apparent basis for the rulings sustaining the Government's objections to these particular questions was that the testimony sought related to Evans' reputation in the business community rather than his reputation in the community where he lived. The majority relied on this distinction, stating, "[N]o foundation was laid to show that these witnesses knew any of the people who lived in the community where Evans resided."

Reputation in the business community, however, is no less probative than reputation in the residential community to show the absence or presence of certain character traits in an accused. In this regard, Professor McCormick's observation is apposite:

> The reputation is usually said to be limited to that which obtained in the community where the accused lived, but this should be extended to embrace any considerable group with whom he constantly associated in his business, work, or other continued activity, and who might reasonably be thought to have a collective opinion about him. C. McCormick, Handbook of the Law of Evidence § 158, at 335 (1954).

See also Whiting v. *United States,* 296 F.2d 512, 517 (1st Cir. 1961). Because the crime charged against Evans had a business setting, the most probative character evidence was kept from the jury by the court's rulings. These rulings were erroneous. They were also prejudicial. For as the Supreme Court said in *Michelson* v. *United States,* 335 U.S. 469, 476 (1948), "This privilege [of

presenting character testimony] is sometimes valuable to a defendant for . . . such testimony alone, . . . may be enough to raise a reasonable doubt of guilt. . . ."

III.

Instead of the traditional presumption of innocence with which criminal defendants are ordinarily clothed, the record in this case suggests that a presumption of criminality attached to the acts of these defendants because of their infamous reputations and notoriety. The defendants may have been guilty of nefarious conduct for which they deserve imprisonment, or they may have had such bad reputations as to be considered menaces to society. Such facts alone, however, cannot warrant a blinding of eyes, permitting a conviction to stand that is based on surmise rather than evidence. This kind of difficulty is present in this case because the charge on which the defendants were convicted and imprisoned, an agreement to extort money, was not sustained by the evidence. No person should be punished under our criminal laws unless he has been proved guilty of a specific offense by competent evidence in a fair trial. Due process of law demands nothing less.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1967 JANUARY SESSION, 1968

Nos. 16312 and 16313

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

SALVATORE BATTAGLIA and DAVE EVANS,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

APRIL 10, 1968

ON MOTION TO REMAND

Before SCHNACKENBERG, SWYGERT and CUMMINGS, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* Since our opinion was announced, defendants have filed a motion to remand to the District Court to determine the effect of any eavesdropping on this trial in accordance with the procedure prescribed in *Kolod* v. *United States,* 36 U.S. Law Week 3306. In response, the Government has transmitted the transcripts of certain overheard conversations involving defendant Battaglia. This Court had not previously been advised that any electronic monitoring had occurred. A careful *in camera* examination of the transmitted material reveals that these conversations were utterly irrelevant to these convictions. We are frequently called upon to determine relevancy as a matter of law. This case is still pending here on a petition for rehearing *en banc* and the documents are also before us. These factors, coupled

with the utter irrelevancy of the documents make it appropriate to dispose of the matter here. Review here also avoids additional delays to defendants. In our view, *Kolod* does not require further District Court action in the circumstances of this case. If there were any doubt as to the tainting of these convictions by the use of these documents, we would afford relief to defendants. There being no such doubt, there is no need to vacate our judgment and remand for a District Court documentary review. Defendants' motion is denied.

Nos. 16312 and 16313.

SWYGERT, *Circuit Judge*, dissenting.

In view of the Supreme Court's per curiam opinion in *Kolod* v. *United States*, 36 U.S.L.W. 3306 (January 30, 1968), I believe that we are required to remand this case to the district court to determine the effect of any eavesdropping. In *Kolod* the Supreme Court said:

> Accordingly we . . . remand the case to the District Court for a hearing, findings, and conclusions on the nature and relevance to these convictions of any conversations that may be shown to have been overheard through unlawful electronic surveillance. . . . If the District Court decides, on the basis of such findings, that the conviction of the petitioners was not tainted . . . it will enter new final judgments of convictions based on the existing record as supplemented by its further findings, thereby preserving to all affected parties the right to seek further appropriate appellate review. 36 U.S.L.W. at 3307.

In the Government's pending motion to modify the order of the Court, the Solicitor General seeks the following modification:

> We submit, however, that there are sound practical reasons why it would be better practice to require the government to submit the logs preliminarily for an *in camera* inspection by the district judge. This would not of course preclude the district judge from conducting further proceedings in instances where he found that a legitimate purpose might be served thereby.

Both of these extracts recognize that it is the function of the district court, not the court of appeals, to conduct an inquiry into the effect of electronic eavesdropping on a defendant's conviction. As *Kolod* now reads, this court's decision in the instant case is in direct conflict with the procedure outlined in that opinion. And even if the Government's motion to modify is granted, a remand to the district court would remain the only proper disposition.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

September Term, 1967 January Session, 1968

No. 16314

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

JOSEPH AMABILE, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

April 26, 1968

Before SCHNACKENBERG, SWYGERT and CUMMINGS, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* This appeal is to review Joseph Amabile's conviction for conspiring with Salvatore Battaglia, Dave Evans and non-defendant Rocco Pranno to violate the Hobbs Act (18 U.S.C. § 1951). The gravamen of the charge was that in January 1965, the conspirators obtained $48,500 from the Riley Management Corporation through threats of bodily harm to its president and economic harm to both. Battaglia's and Evans' convictions were affirmed in .... F.2d .... (7th Cir. 1968).

Amabile first argues that the Government failed to prove that he conspired to obtain money from Riley Management Corporation by extortion. A like argument was advanced by Battaglia and Evans and rejected in their appeals. For the reasons stated in the prior opinion, the evidence was sufficient to support Amabile's conspiracy conviction. See .... F.2d at pp. ..... .

Amabile's next point is that his "extortionate threat made against a man [William Riley, president of the Riley Management Corporation] whose business touches inter-

state commerce" does not violate the Hobbs Act because the threat was only indirectly and remotely connected with interstate commerce. We disposed of this issue in the opinion dealing with Amabile's co-defendants. See .... F.2d at p. ..... However, since Amabile presses the issue to considerable extent, further discussion may be warranted.

The Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone* v. *United States,* 361 U.S. 212, 215. As to the commerce power, the Supreme Court has recently stated in *Katzenbach* v. *McClung,* 379 U.S. 294, 305:

> "The power of Congress in this [commerce] field is broad and sweeping; where it keeps within its sphere and violates no express constitutional limitation it has been the rule of this Court, going back almost to the founding days of the Republic, not to interfere."

Since Congress has used all its "broad and sweeping" commerce power in enacting the Hobbs Act, the courts have rightly attributed great scope to the statute. Thus in language applicable here, Judge Sanborn stated as follows in *Hulahan* v. *United States,* 214 F.2d 441, 445 (8th Cir. 1954), certiorari denied, 348 U.S. 856:[1]

> "It seems apparent from the language of the statute that it was the intent of Congress to protect interstate commerce against extortion or attempted extortion which in any way or *in any degree* reasonably could be regarded as affecting such commerce. The exaction of tribute from contractors engaged in local

[1] Recent instances where this Court has affirmed Hobbs Act convictions in cases involving construction projects are *United States* v. *Kramer,* 355 F.2d 891, (7th Cir. 1966), certiorari denied (except on an irrelevant point) 384 U.S. 100, and *United States* v. *Sopher,* 362 F.2d 523 (7th Cir. 1966), certiorari denied, 385 U.S. 928.

> construction work who are dependent upon interstate commerce for materials, equipment and supplies, or who are engaged in constructing facilities to serve such commerce, is, in our opinion, proscribed by [the Hobbs Act]." (Emphasis supplied)[2]

As in *Hulahan,* Amabile was exacting tribute from a builder "dependent upon interstate commerce for materials, equipment and supplies" and was therefore within the reach of the Hobbs Act. It is unnecessary that the extortion have as substantial an effect on interstate commerce as a combination in restraint of trade. *United States* v. *Malinsky,* 19 F.R.D. 426, 428 (S.D. N.Y. 1956).

As pointed out in our prior opinion, the $48,500 payment made pursuant to Amabile's threats depleted Riley Management Corporation's reserves. Depletion is pertinent in considering commerce under the Hobbs Act. Thus in *United States* v. *Provenzano,* 334 F.2d 678, 692 (3d Cir. 1964), certiorari denied, 379 U.S. 947, a Hobbs Act commerce instruction was approved which stated in part:

> "Where the resources of a business are depleted or diminished in any manner or degree by payments of money obtained by extortion the capacity to efficiently conduct such business is to the extent of the drain on its resources likely to be impaired."

The Hobbs Act does not require that the threats to Riley and his family be directly aimed at interstate commerce. In the statute Congress defined extortion as obtaining property through "actual or threatened force, violence, or fear" (18 U.S.C. § 1951(b)(2)). There is no requirement that the extortion be directed at interstate

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[2] The *Hulahan* case has been followed by this Court at least twice: *United States* v. *Floyd,* 228 F.2d 913, 916, 918-919 (7th Cir. 1956), certiorari denied, 351 U.S. 938; *United States* v. *Green,* 246 F.2d 155, 160 (7th Cir. 1957), certiorari denied, 355 U.S. 871.

commerce as long as the extortion "in any way or degree obstructs, delays, or affects commerce" (18 U.S.C. § 1951 (a)). To accept appellant's construction would mean that Congress had exempted the most efficacious of threats. Certainly Congress did not intend such an anomalous result.

Like his co-defendants, Amabile asserts that the District Court undûly restricted cross-examination. He first asserts that he was not permitted to undermine Riley's testimony that the Lansing, Illinois, building project was meant to be kept a secret from Amabile and Palermo. As we pointed out in our earlier opinion, "Evans' counsel was permitted to elicit that the Riley company had prepared a brochure to promote sales of the Lansing apartments, and that the Hammond *Times* published a story about the project in August, 1964." .... F.2d ..... In addition Battaglia's counsel was permitted to cross-examine Riley, without objection, about advertising for the Lansing project, selling units therein before construction, and taking salesmen to Las Vegas to promote this project. It is clear that Amabile was given sufficient latitude to rebut the secrecy of the Lansing project.

Amabile also complains of the District Court's refusal to let his counsel ask Riley about the contents of five statements he had given to the Federal Bureau of Investigation, made available to defense counsel under the Jencks Act (18 U.S.C. § 3500). Riley had already testified that he advised the FBI of the 1962-1963 threats of Palermo and Amabile and that he had not read the statements. He of course had no way of knowing whether his complaints of the physical threats of Amabile and Palermo had been transcribed by the FBI in those statements. Amabile's counsel made no attempt to introduce the statements, so that they are not in the record. If the FBI statements were actually devoid of any reference to the Amabile-Palermo threats, Amabile's counsel should have called the recording FBI agents in order to lay a proper founda-

tion for the admission of the five statements to impeach Riley. As Judge Friendly ruled in *United States* v. *Borelli*, 336 F.2d 376, 391 (2d Cir. 1964), certiorari denied, 379 U.S. 960:

> "when the witness is confronted with what appears to be an inconsistency, he may deny having made the contradictory statement to the agent and counsel's only recourse would be to call the agent and endeavor to have him prove the contrary."

See also 3 Wigmore on Evidence (3d ed.) § 1025.

Amabile repeats another argument offered by his co-defendants in their appeals, namely, that he was not permitted to show that Riley expected consideration in a state court theft indictment and in a federal tax investigation in return for his testimony herein. We rejected this argument in the prior appeal in the last paragraph of our discussion under "Restriction of Cross-examination and Refusal to Admit Defense Exhibits" (.... F.2d at p. ....). The elaboration of this subject in Amabile's briefs calls for a more detailed discussion.

Of course, a defendant may normally show that a prosecution witness expects favorable treatment from the Government in return for his testimony. 3 Wigmore on Evidence (3d ed.) § 967. It is also well settled that the credibility of a witness may not be impeached by showing that he has been arrested and indicted. *Michelson* v. *United States*, 335 U.S. 469, 482; *United States* v. *Bolden*, 355 F.2d 453, 457 (7th Cir. 1965), certiorari denied, 384 U.S. 1012; Wigmore, *op cit.*, § 980a. This principle applies *a fortiori* to a federal tax investigation that has not resulted in charges being brought against the witness. In the present case, the District Judge was faced with a collision of these two principles. He was entitled to balance the conflicting interests and therefore did not abuse his discretion in keeping Riley's theft indictment and federal tax investigation from the jury.

Viewed in isolation, Amabile's effort to explore Riley's motives for testifying in the Government's favor might be proper. But we must heed the counsel proffered in *Johnson* v. *United States*, 318 U.S. 189, 202 (concurring opinion):

> "In reviewing criminal cases, it is particularly important for appellate courts to re-live the whole trial imaginatively and not to extract from episodes in isolation abstract questions of evidence and procedure. To turn a criminal appeal into a quest for error no more promotes the ends of justice than to acquiesce in low standards of criminal prosecution."

Applying this counsel, Amabile's entire cross-examination of Riley has been scrutinized.

Riley was subjected to a lengthy cross-examination, and Amabile's attempts to go into the state court indictment and tax investigation occurred very early. Thereafter, on at least seven occasions, Riley was asked questions implying that he was an unsavory character and financially irresponsible.[3] Counsel for Amabile then again sought

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[3] Seven such occasions are as follows:

"Q. Weren't you arrested while you were drunk for exposing yourself?"

• • • • •

"Q. Did you ever get into a fight with a young man at the El Morrocco Club because you were so drunk?"

• • • • •

"Q. As a matter of fact, isn't it true in order to get that loan you bribed one of the officers [of the savings and loan association]?

"A. No, sir.

"Q. And paid him $25,000.?"

• • • • •

"Q. Did you know it was an offense against the laws of the United States to bribe an official of a loan association for the purpose of obtaining a loan?"

• • • • •

to return to the state court proceedings against Riley. The series of intervening questions was so obviously improper that there has been no attempt on appeal to justify them. Considering the impropriety of the entire inquiry, it is patent that Amabile's references to the state indictment and federal tax investigation were designed to prejudice the jury against Riley through smear and innuendo rather than to impugn his veracity. Cf. *United States* v. *Pennix*, 313 F.2d 524, 528-530 (4th Cir. 1963).

The District Court's rulings are also supportable on the ground that appellant's "questions do not appear sufficiently likely to have developed evidence that would have significantly weakened the Government's case" by showing the witness' bias. *United States* v. *Jones*, 360 F.2d 92, 96 (2d Cir. 1966), certiorari denied, 385 U.S. 1012. The United States Attorney does not control investigations being conducted by the Internal Revenue Service. Such investigations are common and usually involve no threat of an indictment. As to the state court criminal action, the United States Attorney was of course not empowered to accord any consideration. On this record, the District Court could properly conclude that the questions were speculative, unrelated to the charges against the defendant and not of sufficient probative value to show bias. *Dis-*

"Q. Weren't you sued by Margaret Gillespie for fraud?"

* * * * *

"Q. As a matter of fact, you were broke at that time."

* * * * *

"Q. * * * did you sign a check to a payee by the name of Bona for $23,000 which came back 'NSF'?"

trict of Columbia v. *Clawans,* 300 U.S. 617, 632;[4] *Lott* v. *United States,* 230 F.2d 915, 918 (5th Cir. 1956), certiorari denied, 351 U.S. 953; *Leary* v. *United States,* 383 F.2d 851, 868 (5th Cir. 1967); *United States* v. *Higgins,* 362 F.2d 462 (7th Cir. 1966), certiorari denied, 385 U.S. 945; *Abeyta* v. *United States,* 368 F.2d 544 (10th Cir. 1966).[5]

Because the United States Attorney was not empowered to influence the course of the state theft case or the tax investigation, and because the questions, in the light of other improper questions as to Riley during his cross-examination, were part of a smear campaign, we cannot say that the District Court abused its discretion in its rulings concerning these two subjects.

Amabile claims that his counsel was given insufficient time to read a 6-page statement that witness Henry La-

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[4] In *Clawans,* the reversal of the District Court was affirmed, but the Court observed (300 U.S. at p. 632):

> "The extent of cross-examination rests in the sound discretion of the trial judge. Reasonable restriction of undue cross-examination, and the more rigorous exclusion of questions irrelevant to the substantial issues of the case, *and of slight bearing on the bias and credibility of the witnesses,* are not reversible errors." (Emphasis supplied)

[5] Amabile has cited no case holding that it is reversible error to refuse to allow a defendant to show that a prosecution witness is biased because he expects favorable treatment on a pending indictment in another jurisdiction or in a tax investigation. In *United States* v. *Masino,* 275 F.2d 129 (2d Cir. 1960), favorable treatment had actually been accorded to the witness, and in *Gordon* v. *United States,* 344 U.S. 414, the trial judge warned the witness awaiting sentence on a guilty plea that leniency depended upon cooperation with the government. *Wheeler* v. *United States,* 351 F.2d 946 (1st Cir. 1965), and *Harris* v. *United States,* 371 F.2d 365 (9th Cir. 1967), are distinguishable because they involved direct financial benefits to the witness.

Key had given to the FBI.[6] This statement was delivered to defense counsel under the Jencks Act at 10 A.M. on April 21, 1967. He had sufficient opportunity to read it from then until 2 P.M., when the usual noon recess ended and the cross-examination of LaKey began. There has been no showing that his cross-examination of LaKey would otherwise have been different if more time had been allowed for study of LaKey's statement. Co-defendants' counsel did not even raise the point on appeal. In the absence of a showing of prejudice, the District Court did not abuse its discretion by allowing only such time as is "reasonably required for the examination of such statement" (18 U.S.C. § 3500 (c)).

Battaglia contended on his appeal that the Government should have granted his request for production of Mike DiVito's grand jury testimony. We held that production was unnecessary. See —— F.2d ——. In addition to DiVito's grand jury testimony, Amabile insists that he was entitled to the minutes of the grand jury testimony of witnesses Henry LaKey and William Riley.[7] Each request was made during the cross-examination of these witnesses. We find no error was committed by the District Court's failure to turn over these grand jury minutes.

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[6] This statement is part of the record on appeal and took us and Government counsel less than 11 minutes to read. The District Court was able to digest and rule on ten such statements by witness Riley during the April 27th luncheon recess.

[7] Excerpts from Riley's grand jury testimony were appended to Battaglia's petition for rehearing of his appeal. They show that Amabile purportedly made the following threat to Riley in 1964 as to the tax investigation of Riley:

> "Don't tell them anything. You know what happens to guys who talk, don't you?"

Riley replied to Amabile and Palermo: "What is the matter with you guys? On one hand you tell me you will kill me if I don't pay you the money; on the other hand these guys [Internal Revenue agents] tell me they will put me in jail."

Amabile relies principally on *Dennis* v. *United States*, 384 U.S. 855, but that case adheres to the earlier standard that a trial court need not allow the defense to examine grand jury minutes in the absence of a showing of a particularized need. At the time that Amabile's counsel requested the grand jury testimony of each of these witnesses, unlike counsel for the defendants in *Dennis*, he did not show particularized need and cannot now supply that requirement by hindsight.

Here, as in *United States* v. *Procter & Gamble Co.*, 356 U.S. 677, and *Pittsburgh Plate Glass Co.* v. *United States*, 360 U.S. 395, defendants sought a wholesale disclosure of grand jury testimony as a matter of right, whereas in *Dennis* the defendants only sought a disclosure of particular testimony.

Moreover, in *Dennis*, there was a 7-year time lag between the grand jury and trial testimony. Thus as Judge Waterman pointed out in *United States* v. *Youngblood*, 379 F.2d 365, 367 (2d Cir. 1967), "there was reason to assay the latter [trial] testimony, some of which is 15 years after the event against the much fresher testimony before the grand jury" concerning occurrences between 1948 and 1955. Here there was no such significant interval between the 1966 grand jury testimony of these witnesses and their 1967 trial testimony.

When Amabile's counsel asked to inspect the grand jury testimony, the Assistant United States Attorney offered to give a copy to the Court for an *in camera* inspection.[8] This offer was not accepted by defense counsel. If it had been accepted, the statements might have been turned over to them, so that any error in this connection was of defendant's own making.

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[8] The Supreme Court has not disapproved of *in camera* inspection by a trial court in order to enable it to rule on a defense motion for production of grand jury testimony. *Dennis* v. *United States*, 384 U.S. 855, 874.

For all these reasons, there was no abuse of discretion in denying production of the grand jury transcripts.

In *United States* v. *Youngblood*, 379 F.2d 365, 370 (2d Cir. 1967), the Court of Appeals for the Second Circuit promulgated a prospective rule giving the defense access as of right to a witness' grand jury testimony on the subjects about which he testified at the trial, unless the Government can show that access should be denied. At the oral argument of this appeal, the Government stated that it had no objection to such a prospective rule in this Circuit. We approve of the *Youngblood* procedure and adopt it with respect to trials commencing after this judgment is entered.

Amabile's final point is that the District Court erred in failing to order a pre-trial preliminary examination before a commissioner pursuant to Rule 5(c) of the Federal Rules of Criminal Procedure.[9] However, by its terms, Rule 5 was meant to afford an arrested person an opportunity to challenge the existence of "probable cause to believe that an offense has been committed and that the defendant has committd it." As the Supreme Court has stated, a preliminary hearing under Rule 5 is not required where, as here, an indictment has already been returned (*Jaben* v. *United States*, 381 U.S. 214, 220), for the grand jury already has found probable cause for holding the defendant for trial. *Bayless* v. *United States*, 381 F.2d 67, 71 (9th Cir. 1967). *Sciortino* v. *Zampano*, 385 F.2d 132, 133 (2d Cir. 1967), certiorari denied, 390 U.S. 906.[10] Neither the lan-

[9] Rule 5(c) provides in pertinent part:

"* * * If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. * * *"

[10] In *Sciortino*, Judge Hays showed that the contrary rule in *Ross* v. *Siriça*, 380 F.2d 557 (D.C. Cir. 1967), was not supported by a majority of that Court, nor has it been adopted in any other Circuit. See 385 F.2d at p. 134.

guage of Rule 5 nor its history supports Amabile's assertion that its purpose was to afford pre-trial discovery.

The judgment of the District Court is affirmed.

No. 16314.

SWYGERT, *Circuit Judge*, dissenting.

I am constrained to dissent on several grounds. First, I adhere to the views expressed in my dissent in *United States* v. *Battaglia, et al.*, No. 16312 and No. 16313 (7th Cir. Jan. 9, 1968) that there was insufficient evidence of a conspiracy engaged in by Amabile with Battaglia and Evans "to obstruct, delay and affect commerce" in the movement of materials for the construction of the Riley dwelling units in Lansing, Illinois by means of extortion.

Second, regardless of the question of the sufficiency of the evidence to show a conspiracy to extort money, there was no proof of a violation of the Hobbs Act, 18 U.S.C. § 1951. Although this issue was presented obliquely in the Battaglia appeal, Amabile has advanced arguments which bring the question into sharper focus.

The evidence showed that during the construction of the Lansing project, Riley obtained building materials from suppliers located outside the State of Illinois. There was no evidence, however, that there was any delay in the shipment or delivery of these materials. Moreover, there was no evidence that any extortion threat directed against Riley carried with it, express or implied, a threat that the work on the Lansing project would be stopped or hindered.

In *United States* v. *Pranno*, 385 F.2d 387, 389 (7th Cir. 1967), *cert. denied*, 36 U.S.L.W. 3346 (Mar. 5, 1968), we said:

> The Supreme Court has made it clear that the statute is to be construed broadly and is not limited to conduct which directly and immediately obstructs a particular movement of goods in interstate commerce. Extortion by threat to disrupt a local activity the stoppage of which would in turn result in stoppage of interstate shipment of raw materials essential for that activity falls within the act. The statute seems to be read as not only prohibiting the obstruction of commerce by extortion, but also prohibiting extortion by any threat, *the carrying out of which would obstruct commerce.* (Emphasis added.)

I interpret this statement to mean that a threat to extort proscribed by the Hobbs Act must have a reasonable causal relation to interstate commerce. The likelihood of an obstruction to the flow of commerce must be the result of the threat. This essential nexus is missing in the instant case.

The majority, quoting from *Hulahan* v. *United States*, 214 F.2d 441 (8th Cir.), *cert. denied*, 348 U.S. 856 (1954), says that "Amabile was exacting tribute from a builder 'dependent upon interstate commerce for materials, equipment and supplies' and was therefore within the reach of the Hobbs Act." The facts in that case, however, were entirely different from those presented here. There the defendant, a labor union representative, conspired to extort money from local construction companies by threats of labor unrest. These companies were dependent for the continuation of work undertaken by them upon local labor represented by the defendant and upon supplies and materials shipped interstate. Thus the extortion threats, if not complied with, would in all probability have brought a cessation of work on the project, thereby interrupting the interstate shipments of construction materials. In the instant case, however, there was no such probability that Amabile's threats to Riley, if not complied with, would have resulted in the interruption of the shipment of con-

struction supplies and materials for the Lansing project. (In fact, it was to Amabile's advantage that the Lansing project proceed without interruption; for only then would Riley have authorized Carlson Construction Company to request "draws" for funds upon the Lawn Savings & Loan Association).

The majority also makes reference to the fact that the "$48,500 payment made pursuant to Amabile's threats depleted Riley Management Corporation's reserves." If a depletion of reserves is all that is necessary to show the requisite effect on commerce, then a threat of any kind to extract money made to a person who happens to operate a business engaged to any extent in interstate commerce comes within the statute's proscription. Under this rationale, a retail store owner, for example, would be afforded federal protection from extortion, regardless of the nature or the likely effect of the threat, simply because his stock of merchandise had in some measure moved in interstate commerce. I do not believe that the Hobbs Act was intended to have such a broad reach. In that connection, Judge Hastie's statement in his dissent in *United States* v. *Stirone*, 262 F.2d 571, 578, 579 (3d Cir. 1958), *rev'd on other grounds*, 361 U.S. 212 (1960), is pertinent:

> [I]t should be considered and kept in mind that the control and punishment of local extortion is primarily the business of local or state government. The Hobbs Act is an auxiliary and partially duplicating federal superimposition on state law enforcement. In the view of Congress this is a desirable measure of federal assistance to the states in the exercise of their police power. But where state power and responsibility are thus primary and the national government is merely performing an auxiliary function, we should not be eager to stretch federal jurisdiction to cover doubtful

cases offering a tenuous or speculative theory of federal jurisdiction.[1]

Third, an error which alone would require reversal (presented rather cursorily in the Battaglia and Evans appeals) relates to the district judge's restriction of Amabile's cross-examination of William J. Riley. Counsel for Amabile attempted to bring before the jury the facts that Riley was under indictment for theft in the state court, that he was under investigation by the Internal Revenue Service for tax evasion, and that his testimony was given in the hope of securing favorable treatment from local and federal law enforcement officers concerning his allegedly illegal conduct. The district judge refused to permit cross-examination on these subjects.[2]

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[1] The majority quotes from *Katzenbach* v. *McClung*, 379 U.S. 294 (1964), to support the proposition that, "Since Congress has used all its 'broad and sweeping' commerce power in enacting the Hobbs Act, the courts have rightly attributed great scope to the statute." I respectfully submit that the abstract language quoted from *McClung* has no application to the instant case. A decision upholding the constitutionality of the Civil Rights Act of 1964 under the commerce power can hardly have pertinency to the intended scope of the Hobbs Act.

[2] The relevant portion of the transcript reads:

[Mr. Bellows, Amabile's counsel:]

Are you the same William G. Riley who was indicted by the Criminal Court of Cook County for thievery in 1966 in the month of February.

Mr. Lamendella: [Assistant United States Attorney] I will object to that, your Honor.

The Court: I will sustain the objection. Mr. Bellows, you know better than that.

Mr. Bellows: I will connect it up, your Honor.

The Court: Mr. Bellows, you know better than that and I direct the jury to disregard that question.

By Mr. Bellows:

Q. Are you under indictment in the Criminal Court Cook County?

Mr. Lamendella: I will object to that.

The Court: I sustain the objection and I direct counsel, Mr. Bellows, to refrain from asking that kind of question. I direct the jury to disregard that question.

Mr. Bellows: May I have a side-bar conference, your Honor, with reference to this?

The Court: No, no side-bar conference after those questions, sir.

Mr. Bellows: May I be permitted to make an offer of proof outside the presence of the jury?

The Court: In respect to that last question, you may.

* * *

Mr. Bellows: Your Honor, my offer of proof is as follows: I expect to show by cross examination and it may be verified, if you choose to do so, if he denies the fact, that he was indicted in the month of February, 1966, for the crime of theft which is a felony; that the matter has been pending now over a year and that the reason for the extraordinary delay in bringing this matter to justice for a crime of theft—actually it was forgery, but under our new statute, your Honor, it is considered to be theft—is that he expects to get consideration, your Honor, from the court and the prosecution in Cook County for his cooperation with the government in this case and for his testimony in this case.

For that reason, your Honor, I think it is extremely important to show motive and reason for his testimony in this case.

The Court: What is the government's position in respect to the offer of proof of the defendant Amabile?

Mr. Lamendella: May we have just a moment?

The Court: Yes.

Mr. Lamendella: If this offer is being made, your Honor, to impeach the witness on the basis of an indictment, we object.

The Court: Do you object to the offer?

Mr. Lamendella: Yes, we do.

The Court: I sustain the objection.

Bring in the jury.

Mr. Bellows: May I add one more point, your Honor?

The Court: I have ruled on your offer. You can't add to an offer once it is made, sir.

Mr. Bellows: I want to explain the position of Lamendella to be inconsistent with my offer. He says he objects to the indictment. This is beyond the indictment.

The majority concedes that when "viewed in isolation" defense counsel's "effort to explore Riley's motives for testifying in the Government's favor might be proper." The majority goes on to say, however, that a defendant's right to show that a prosecution witness expects favorable treatment from the Government in return for his testimony must be balanced against the rule that the credibility of a witness may not be impeached by showing that he has been

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The Court: He said he objected to the offer.

Mr. Bellows: Well, he said to the indictment.

The Court: You object to the offer of proof?

Mr. Lamendella: I do, your Honor.

• • •

The Court: You may continue, Mr. Bellows, with the cross examination of this witness.

By Mr. Bellows:

Q. Mr. Riley, are you presently under investigation by the Internal Revenue for evasion of taxes?

Mr. Lamendella: I will object to that, Your Honor.

The Court: I sustain the objection.

Mr. Bellows: May I make another offer of proof?

The Court: Yes.

• • •

Mr. Bellows: My offer of proof, your Honor, is that Mr. Riley, the witness on the stand, is presently under investigation by the Internal Revenue; that he has two lawyers prominent in the tax field in criminal cases representing him, and that if he were cross examined, your Honor, he would admit, I am sure, that he knows that his financial affairs are under investigation by the Internal Revenue for failure to account for taxes and for the evasion of taxes, and that his books are in the hands of the Internal Revenue agents, and that he expects to get consideration, your Honor, from the government for his cooperation with them in this case and for his testimony in this case.

The Court: What is the position of the government in respect to the offer of proof of the defendant Amabile?

Mr. Lamendella: We object, your Honor.

The Court: I sustain the objection.

• • •

indicted or is under investigation, and that the balancing of these conflicting rules entitled the district judge to use his discretion in deciding whether to permit cross-examination on Riley's expectation of favorable treatment.

I do not believe that a conflict between these evidentiary rules, such as the one the majority attempts to erect, exists. The right of a defendant in a criminal prosecution to cross-examine witnesses testifying against him is guaranteed by the sixth amendment to the Constitution. Courts have not been grudging in their protection of this right. As the Supreme Court recently stated in *Pointer* v. *Texas*, 380 U.S. 400, 405 (1965):

> There are few subjects, perhaps, upon which the Court and other courts have been more nearly unanimous than in their expressions of belief that the right of . . . cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.

Both the treatises and the case law recognize the propriety of the kind of cross-examination in which Amabile's counsel sought to engage. Thus Professor McCormick says:

> The law recognizes the slanting effect upon human testimony of the . . . self-interest of the witness in the outcome of the case. Any such partiality, proceeding from any acts, relationships or motives, may be proven to impeach credibility . . . . [One such instance is] in a criminal case when the witness testifies for the state and it is shown that an indictment is pending against him, . . .
>
> C. McCormick, Handbook of the Law of Evidence § 40, at 82, 83, 84 (1954).

See *Harris* v. *United States*, 371 F.2d 365 (9th Cir. 1967); *Wheeler* v. *United States*, 351 F.2d 946 (1st Cir. 1965);

United States v. *Masino*, 275 F.2d 129 (2d Cir. 1960). As the Second Circuit observed in *Masino:*

> Cross-examination is proper when its purpose is to reveal bias or interest on the part of the witness being examined . . . . It was highly relevant and material to bring out that the state court charge . . . had been quashed upon the intercession of the Assistant United States Attorney as was claimed by the defense and not denied by the government.[3] This is the kind of situation where the widest possible cross-examination should be permitted. The appellant was entitled to have the jury know what had happened with respect to the charge, including any part which representatives of the government had played, so that the jury could draw its own conclusions with respect to possible motives for Brown's testimony. 275 F.2d at 132.

It is apparent from the record that the district judge perceived no "collision" of the kind suggested by the majority. Moreover, any attempt to show the bias of a witness by evidence that he is under indictment or investigation would create the same "collision." Thus the rule enunciated by the majority might preclude cross-examination of this kind in every case, a result contrary to the general rule permitting such inquiry. I believe that Amabile's efforts to question the credibility of Riley by showing his relationship to the Government and the reward he hoped to gain by reason of his testimony was entirely proper and should have been permitted.

Finally, the prejudicial trial errors discussed in my dissent in *Battaglia,* other than the exclusion of the testimony

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[3] The majority says, "As to the state court criminal action, the United States Attorney was of course not empowered to accord any consideration." This observation ignores the possibility that the United States Attorney might have interceded with the local authorities on behalf of Riley, a situation similar to that occurring in *Masino.*

of character witnesses on behalf of Evans, have equal applicability to the instant case. These errors additionally and cumulatively require a reversal.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit.

Judgment

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Tuesday, January 9, 1968

Before: Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*

No. 16312, 16313

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

SALVATORE BATTAGLIA and DAVE EVANS,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgments of the said District Court in this cause appealed from be, and the same are hereby,

AFFIRMED, in accordance with the opinion of this Court filed this day.

Order

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Wednesday, April 17, 1968

Before: Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*

No. 16312

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

SALVATORE BATTAGLIA, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

IT IS ORDERED by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.

Grand Jury Testimony

WILLIAM J. RILEY, called as a witness by the Grand Jury, having been first duly sworn by the Foreman, was examined and testified as follows:

Examination by Mr. Bailey.

Q. Would you state your name, please sir?

A. William J. Riley.

Q. Would you tell us your address Mr. Riley?

A. 1522 Stonegate Road, La Grange Park, Illinois.

Q. Now, Mr. Riley, before we go any further at this point I want to advise you that you have certain rights as a witness appearing here under subpoena before the Grand Jury.

Now, one of these rights is the right to refuse to answer any question which may be asked of you which might in any way tend to incriminate you and that's your right under the Fifth Amendment to the Constitution of the United States.

Are you aware of that, sir?

A. Yes sir.

Q. And you also have the right, of course, if you desire, to consult with Counsel of your choosing prior to your appearance here and I presume you have so consulted with your Counsel, have you not, sir.

A. Yes, sir.

Q. And who is your attorney, sir?

A. Mr. Crowley.

Q. Now, Mr. Riley, would you tell the ladies and gentlemen of the Grand Jury your occupation, please?

A. I am a real estate broker.

Q. And under what business name do you do business?

A. The Riley Management Corporation.

Q. And is that a corporation incorporated under the laws of the State of Illinois?

A. Yes.

Q. Now, were you so employed in that business in 1962, sir?

A. Yes, I was.

Q. All right. Is it part of the business of the Riley Management Corporation to develop and manage an apartment development in North Lake, Illinois, known as the King Authur Apartments?

A. I respectfully decline to answer on the grounds that my answer might tend to incriminate or dishonor me.

Mr. Betar: Or what?

A. Or degrade me.

Mr. Betar: You think you would be degraded by giving us an answer to that question, Mr. Riley?

A. Is that a question?

I respectfully decline to answer on the grounds that answer might tend to incriminate me or degrade me.

Mr. Bailey: Q. When did you begin construction of the King Arthur Apartments in North Lake, sir?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Mr. Betar: You know Rocco Pranno?

A. I respectfully decline to answer that question on the grounds the answer may tend to intimidate me or—incriminate me or degrade me.

Mr. Betar: It might degrade you but I don't think it—do you know Jimmy Martell?

A. I respectfully decline to answer.

Mr. Betar: On what grounds?

A. On the ground that my answer may tend to incriminate or degrade me.

Mr. Bailey: Q. Do you know Joseph Amalbiae?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. Do you know him by any other name? Do you know the name Joe Shine?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Have you ever been in the El Morocco Lounge?

A. I respectfully decline to answer on the grounds my answer may tend to intimidate or degrade me.

Mr. Betar: Did you—

Mr. Bailey: You said "intimidate" I think you mean "incriminate"?

A. Yes.

Mr. Betar: Did you talk with Mr. Bailey and myself and Mr. Walsh and Mr. Komensky at your home last week, one evening?

A. I wonder if I might talk to my counsel?

Mr. Bailey: If you would like an opportunity to consult with Counsel about that question, you may.

(Witness left the room.)

The Witness: A. Yes, I did.

Mr. Betar: I take it you consulted with your counsel prior to answering that question, is that correct, Mr. Riley?

A. That is correct.

Mr. Bailey: Q. What are your duties? Would you mind telling the Grand Jury what the job of a real estate broker is?

You told us you were a real estate broker. What duties does that entail? What does a real estate broker do?

A. You are talking about a real estate broker in general?

Q. You, you as a real estate broker, what do you do as a real estate broker?

A. You are asking me to commit myself respectfully—not the real estate brokers in general?

I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Examination by Mr. Betar.

Q. What do real estate brokers generally do?

A. Generally, real estate brokers sell real estate, rent real estate, lease real estate for other people.

Q. Are you an officer of the Riley Management Corporation?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Is your wife an officer of the Riley Management Corporation?

A. I respectfully decline to answer on the grounds that my answer might tend to incriminate or degrade me.

Q. Your wife? You are answering that question about your wife, that it would tend to incriminate you or degrade you?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Did you ever pay any money to Joe Shine?

A. I respectfully decline to answer on the grounds that my answer might tend to incriminate or degrade me.

Q. Ever pay any money to Joe Amalbiae?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Did you ever pay any money to Rocco Pranno?

A. I respectfully decline to answer on the grounds that my answer might tend to incriminate me or degrade me.

Q. Did the Riley Management Corporation ever pay any money to those three persons?

A. I respectfully decline to answer on the grounds my answer might tend to incriminate or degrade me.

Mr. Bailey: Are you acquainted with Leo Shibaiba (phonetic)?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Mr. Betar: Q. He at one time was an alderman in the City of North Lake, was he not?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. You know Pete Anderson?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Mr. Bailey: Pete Anderson is the Building Commissioner of the City of North Lake, isn't he?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Mr. Betar: Q. Do you have a lawyer in the Riley Management Corporation, legal counsel, I mean other than your counsel who represents you here today, an internal lawyer?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Mr. Bailey: Did you ever pay any money to Leo Shibaiba or Pete Anderson?

Mr. Betar: Q. How do you think you will be degraded, Mr. Riley? I am just interested. I can see how you can be incriminated but I don't see how you—

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. I am disappointed in you, Mr. Riley, I thought you were more of a man then you have demonstrated here before the Grand Jury after I talked with you, but we all make mistakes.

Examination by Mr. Bailey.

Q. Did you file personal income tax returns on Form 1040 for the year of 1962, Mr. Riley?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. You file them for the year 1963?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. Mr. Riley, can you tell the ladies and gentlemen of the Grand Jury, sir, what was happening in respect to the Riley Management Company on June 22nd, 1962?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. Is that date particularly memorable to you?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Is that the date, Mr. Riley, that you drew checks on the account of the Riley Management Company in the total amount of eleven thousand, one hundred and ten dollars?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. And that total being the total of eight separate checks?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. Isn't it true that of those eight checks seven of them, seven checks were charged on your books and records to legal expenses in connection with the North Lake King Arthur Development?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. You didn't pay eleven thousand dollars in legal expenses on June 22nd, 1962, did you, Mr. Riley?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Is Joe Shine a lawyer?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. Did you ever pay any lawyer at El Morocco Lounge?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Is Leo Shibaiba a lawyer?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Did you put this money in your own pocket?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Did you pay tax on any of that eleven thousand dollars?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Examination by Mr. Betar.

Q. What kind of occupancy do you have in the King Arthur Apartments?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Any hoodlum occupants?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Do you have a dog?

A. Yes, I do.

Q. How is he feeling?

A. Not too good.

Q. Take him to the vet?

A. Yes, we just got her out yesterday.

Examination by Mr. Bailey.

Q. Mr. Riley, let me show you a photostatic of the check drawn on the account of the Riley Management Corporation, Check No. 18910, dated June 22nd, 1962 made out to the order of William J. Riley in the amount of five thousand dollars and signed William J. Riley, that is a check drawn on your account to the LaSalle National Bank in Chicago.

What happened to the five thousand dollars, Mr. Riley?

A. I respectfully decline to answer on the grounds that my answer might tend to incriminate or degrade me.

Q. Is that your signature? Is that your signature?

A. I wonder if I could talk to my counsel again.

Mr. Bailey: You certainly may.

We will have a short recess.

(A short recess was taken.)

Mr. Bailey: Miss Reporter, would you read back the last question, please.

(Whereupon the desired portion was read by the reporter.)

The Witness: A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Mr. Bailey: Q. And I now show you a non-negotiable voucher representing the same check No. 18919 of the Riley Management Corporation, sir, your corporation, in the sum of five thousand dollars payable to William J. Riley. Is that,

sir, a record, a business record of the Riley Management Corporation?

A. I respectfuly decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Q. And does it show on that record that William J. Riley received five thousand on June 22nd, 1962, sir?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Mr. Riley, on your tax return, the tax year 1962, did you show this five thousand dollars as income?

A. I respectfully decline to answer on the grounds that my answer may tend to incriminate or degrade me.

Mr. Betar: Mr. Riley, do you intend to give the same answer that you have been giving, declining to answer on the grounds of the Fifth Amendment to each and every question which we may ask you about the Riley Management Corporation or King Arthur Apartments or any payments of monies out of the Riley Management Corporation?

A. Yes.

Mr. Bailey: Q. Mr. Riley, is it your desire to protect someone who received this money? Is that the reason for your refusal to answer questions?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Are you afraid of Joe Shine?

A. I respectfully decline to answer on the grounds that my answer might tend to incriminate or degrade me.

Q. Are you afraid of Rocco Pranno?

A. I respectfuly decline to answer on the grounds my answer may tend to incriminate or degrade me.

Q. Did you keep this money?

A. I respectfully decline to answer on the grounds my answer may tend to incriminate or degrade me.

Mr. Bailey: I have no further questions.

Mr. Foreman, you may excuse the witness.

(Witness excused.)

(Which were all the proceedings heard in the above-entitled matter.)

EXHIBIT NO. 3500-0-1

WILLIAM G. RILEY, called as a witness by the Grand Jury, having been first duly sworn, by the Foreman, was examined and testified as follows:

Examination

By Mr. Schippers:

Q. Would you state your full name, please, sir? And spell your last name for the record.

A. William G. Riley, R-i-l-e-y.

Q. Mr. Riley, you were in the construction business, is that correct, sir?

A. That is correct.

Q. Did you give a sworn statement to agent John Walsh and Wallace Oshiro?

A. Yes.

Q. Did you give that statement on or about the 28th day of November?

A. Yes, I did.

Q. And did you sign that on or about the 28th day of November?

A. Yes.

Q. Mr. Riley, I show you the two pages marked Grand Jury Exhibit No. 110, and ask you if that is one of the statements—if that is the statement to which you refer?

A. Yes, it is.

Q. You notice on that, on the second page it was typed the 29th day of November. That is incorrect, is that right, sir?

A. Correct.

Q. As a matter of fact, you signed it today?

A. I signed it today.

Q. Would you read that statement to the ladies and gentlemen of the Grand Jury.

A. "I, William G. Riley, age 39, do solemnly swear that the statements made on the following two pages are true and correct and to the best of my recollection, I

further state that I have given this statement freely and voluntarily to special agent John M. Walsh, Intelligence Division, Internal Revenue Service. And that no threats or promises have been made to me in connection with the statements made herein.

"In late June, 1962, Dave Evans told me that Joe Shine had been into the rental division office in Northlake that day, and put a $50 deposit on an apartment. When the balance of the rental came due on the apartment in * * *

* * *

"The next time I met with Shine at Polarmo's office, I asked him for the rent. Shine said, 'Don't worry about it, I will get it for you.' Shine did not pay his rent.

"The next time I saw him, I asked him again for the rent. Shine said, 'Go blank yourself. Come on, what, are you kidding? Or something.'

"I told Shine that he had forced me to pay off to hire their subcontractors, and now I had to give him an apartment. I said, 'Joe, where is it going to end?' Shine kept saying, 'Don't bother me, you have got lots of money.' I told Shine that the rent from the apartment had to be paid to the owner, and that it was costing me money.

"From June 1, 1962 through June 30, 1965, Shine occupied the apartment in Building 27, but paid no rent other than the $50 deposit which he had made. Every month when the rental was collected, by rental division due, to be paid over to the owner of that particular building, I would have to take the $139 rent which Shine had not paid from my miscellaneous construction fund and place it into the rental division fund to make up the total rentals due the owner of Building 27. This was done every month, starting with July, 1963 through and including June, 1965. Time after time when I asked Shine for the money, he told me that it was costing" excuse me—"Time after time I asked Shine for the money and told him that it was costing me that money for the rent which he was not paying me.

Shine in reply said 'Oh, come on, you have got lots of money.'

Signed: "William G. Riley, subscribed and sworn on the 28th day of November, 1966."

It is further signed by John Mr. Walsh, special agent, and Wallace Oshiro, special agent.

Q. You gave that statement freely and voluntarily, did you, sir?

A. Yes, sir.

Q. Mr. Riley, I show you a photograph marked Grand Jury Exhibit 1000, for identification, and ask you if you can identify the person whose photograph appears therein?

A. That is Joe Shine.

Q. That is the man to whom you are referring in this testimony, is that correct, sir?

A. That is correct.

Q. I now show you what has been marked as Grand Jury Exhibit No. 11 for identification, which is a 10-page statement purporting to be a 10-page statement of yourself, and ask you if you made that statement?

A. Yes, I did.

Q. And did you sign that, also, today?

A. Yes, I did.

Q. And you will notice, sir, that again they typed in the 29th. That is in error, is it not, sir?

A. That is correct.

Q. It was actually typed today?

A. Today.

Q. That was given and signed voluntarily and without any compulsion or duress?

A. That is correct.

Q. Read that.

A. "Sworn statement of William G. Riley.

"I, William G. Riley, age 39, do solemnly swear that the statements made in the following 10 pages are true and correct, and to the best of my recollection. I further state that I had given this statement freely and voluntarily to

special agent John M. Walsh, Intelligence Division, Internal Revenue Service; and that no threats or promises have been made to me in connection with the statements made herein.

"In 1960, I formed the Riley Management Corporation, Bellwood, Illinois. From 1960 through 1965, I was president, majority stockholder of the Riley Management Corporation.

"In the late winter or early spring of 1962, Frank Falecie, building contractor, came to me with a proposition for a second King Arthur development in Northlake. He told me he had the site in Northlake, Illinois, and could obtain the financing. That he had constructed buildings in Northlake and could obtain the proper zoning in Northlake. His proposition was that he would build the project, and I would sell the buildings and manage the apartments. This proposition greatly interested me. So I commenced to survey the practicability of such a project as to sales and rentals, and told my attorney, Francis Faris, to investigate with Falecie the feasibility of obtaining the necessary Northlake zoning and annexation ordinances.

"Approximately one week after commencing to investigate the possibility of a second King Arthur development, I received a telephone call from Geno Polarmo, a partner of Melrose Park Plumbing Company. Geno said, 'Come on over tomorrow morning at ten. Nick wants to see you.' I told Geno I would be there.

"The next morning I drove to the office of Melrose Park Plumbing Company and entered the office where I met Geno Polarmo. Geno took me into Nick's office where he introduced me to Nick Polarmo. Geno then left the office, and Nick said, 'Bill, I want you to meet Joe Shine. Joe, this is Bill.'. I shook hands with Shine, and for the first minute or two of the meeting, we merely passed pleasantries. Polarmo then asked me if I was planning a project in Northlake. I told him I was thinking about it, but it was still in the planning stage. Polarmo got up and said, 'Planning blank. What the blank do you think you are

doing in Northlake? Don't you ever learn? Shine then said, 'Don't you know that Northlake is our town? We have got Northlake. Nobody can approve anything in Northlake except me. I'm the man to see.'

"Polarmo said, 'Why didn't you tell me? You don't do anything in Northlake without us.' I said, 'Nick, listen. It is just in the planning stages. I haven't done any of the work. It is just in the planning stages.'

"Polarmo said, 'You don't move a shovel out there without us. Without us, you can't do anything.' Shine again said, 'I am the man out there you want to see. I am the guy that runs that town.'

"I told Polarmo and Shine that the project was something only in the preliminary stages, that I had a lot of work to do on the thing. I also told Polarmo and Shine that my attorney had met with Mayor Nearey, and that Falecie was going to handle the deal. Shine got up screaming and said, 'I am the man. The Mayor can't do anything without me. You saw the wrong guy. That is our town. You do business with us. It will cost you $70 grand to build in Northlake. Without us, you have got nothing.'

"Polarmo said, 'You can build the building in the middle of the street if you want to, and no one will bother you. But without us, you don't turn a shovel.' I told Shine and Polarmo that I had—that I would build a good building, but Shine said, 'I don't care what kind of building you are going to build. You don't turn a shovel without us in Northlake. That is our town.'

"I said, 'Listen, I am not even sure I am going to go with this thing yet. I have got a lot of work to do on this thing yet.' Polarmo and Shine waived these statements aside. Polarmo said, 'What are you, some kind of a smart blank punk, or something? Of course you are going to build it,' I said, 'Listen, I have got to talk to my attorney about this.' Shine said, 'You don't have to talk to blank. We want 70 grand or you don't turn a shovel out there.' I told them that I didn't know yet if I would build the

project. But they had the project already started. I told Polarmo and Shine that the deal was not made yet, and that I could not come up with that much money. Shine said, 'I have got to have 30,000 in cash right away to take care of my Northlake people. The nuts over there have to have their money right away.'

"Polarmo said, 'Don't forget, you are not going to move in Northlake. If you do, we will pull your subcontractors in Addison.'

"Shine said, 'No permits. You don't get nothing in Northlake until we get the 30 grand cash.' Polarmo turned and said to Shine, 'I made this guy. Now, look what he is trying to do.' Shine said, 'You don't do business with nobody in Northlake but me. I am the man.'

"I then received numerous phone calls from Shine concerning the Northlake Project. Approximately one week after the first meeting with Polarmo and Shine, I again met them at Nick's office. Shine said, 'How is the project coming? Have you got the money?' I said, 'Listen, Joe, I haven't even started this thing yet. I don't have a land loan yet.'

"Shine said, 'What the blank, are you a wise guy or something? We can get the zoning for you.' I said, 'I don't need the zoning yet. I am still in the planning stages.' Shine said, 'Listen, I need $30,000 cash, now, to take care of my Northlake people.' I said, 'Listen, you guys, I don't even know if I am going to build this yet and you want money. There isn't any money yet.'

"Polarmo said, 'Listen. The Addison project is going pretty good. You don't want trouble out there, do you?' I said, 'No, I don't want trouble, but I am not ready to go yet.' Shine said, 'Get the money together, and we will get the zoning for you. It is our town.'.

"Polarmo said to Shine, 'Look at this guy. I made him at Addison, and now he is trying to con us.' Shine said, 'Nearey is our guy. I will take care of Nearey.'

"Numerous additional meetings were held over a period of weeks with Polarmo and Shine. Polarmo kept telling

me how he made me in Addison and how he could stop me cold in Addison and Northlake. Polarmo and Shine kept telling me that we had a deal, and I kept telling them that we didn't. During these meetings, I kept trying to tell Polarmo and Shine that Northlake was not definite, and in the event it was, I would not be the builder, only the selling and renting agent. No matter what I said along these lines, they took the position that the Northlake project was a reality. Shine kept saying, 'It will cost you $70,000 to build in Northlake. When we get the 70,000, you have the okay. And with my okay, you can get the zoning and build any way you want.'

"I told him that I wasn't interested in building junk. But he just waved this aside and said, 'I don't care what kind of a building you build, you don't turn a shovel in Northlake without us. That is our town. I have to have the 30,000 cash, now, for the nuts over in Northlake. The other 40,000 you can pay me in checks to legitimate companies.'

"I said, 'Joe, I don't have the money yet. I haven't opened up the loans yet, and I might not even go ahead with the project.' Shine said, 'These guys got to have their money. They need their money. They are going on vacation.' Polarmo said, 'You have got big people behind you, now, Bill. You have got it made, now. You have got big people behind you.'

"At these meetings I kept telling Shine and Polarmo that my loans were not opened yet; I had engineering work to do, I had numerous things to do, and if they kept—if I kept coming over here to the meetings, I would never get the project off the ground. Shine then said, 'What the hell am I going to tell the man?'"

"On another occasion during this four- to six-week period, prior to May 25, 1962, I received a call from Nick Polarmo. Nick said, 'Bill, come on over, I want to see you.' I said, 'Nick, I haven't got the money, I have got things to do; I got a business to run. I haven't got the money.' Nick said, 'Come on over, we have got to see you.'

"When I arrived at Polarmo's office, Shine was sitting there, and I barely got inside the door when Shine said, 'Where the blank is the money?' I said to them, 'I just told you over the phone I don't have the money.' And they would just sit around and talk to me about the money. I kept telling them that I had a business to run, and that they had me going nuts worrying about these things. The conversation would always get back to the point where Shine would say, 'Where the blank is the money?'

"I then said to Polarmo and Shine, 'Let me see if I can explain this to you: First, I have got to get a land loan. Then, I have got to do this. Then I have got to do that. After I got through the whole process, Shine then looked at Polarmo and said, 'Where the blank is the money? What is this guy doing to us?'

"During this time, I received a telephone call every two days from either Shine or Polarmo who said they had to see me right away. When I would get to Nick's office, the first thing Shine would say is, 'Have you got the money? Where is the money? We made a deal. Where is the money?'

"I kept telling them there was no deal. That the engineering had not yet been completed, and that I had no loans yet. By this time, I was scared because I knew they had taken the position that I owed them $70,000 whether I went ahead with the Northlake project or not. I was also afraid that Nick would stop the Anderson project, which would have put my company out of business.

"In May, 1962, I received a tentative approval for a land loan from the First Federal Savings & Loan Association of Berwyn which was subject to proper zoning and subdividing. A day or two later, I was again called to Nick's office by Shine and Polarmo. I told them about the tentative loan approval, and attempted to explain the details in perfecting a land loan. At this time, they became more demanding, and Shine said, 'Have you got the money? Where the blank is the money?' I told them that I could

not get them the $30,000 until after the land loan opened. And to open the loan, I would have to have the proper zoning and subdividing.

"Shine said, 'You are not going to get blank until we get the 30,000 cash. You are not going to do nothing until we get the money. You will get your zoning when we get the $30,000. You will have your zoning like that—snapping his fingers—when the Northlake nuts get their money. When the Northlake nuts get their money, you get your zoning, not before, do you understand? No money, no zoning.'

"I was now backed in a corner because I didn't have the 30,000. On May 25, 1962 I authorized the issuance of a $5,000 check payable to myself, charged against legal fees. I endorsed this check, and then directed my office manager, John O. Hutchison, to take this check to the LaSalle National Bank and cash it and bring the cash back to me. Hutchison did cash the check, and on the same day returned the cash to me at my office at the Riley Management Corporation. When Hutchison had returned from the bank with the $5,000 in 10- and 20-dollar bills, I called Nick Polarmo at his office and said, 'Nick, I have got some money.' Nick said, 'Come over, we will be waiting.'

"When I arrived at the office of Melrose Park Plumbing and went into Nick's office, Shine was there waiting for me. I handed the envelope containing the $5,000 in cash to Shine. He opened the envelope, took out the money and said to Nick, 'What is this guy trying to pull? Here we are trying to make him a living, and what is he trying to do? Look at this. $30,000 we told him to have, and look at this. I want the rest of the money. Where is the money?'

"I said, 'Joe, listen, I haven't got the money. I will get it as soon as I can. I haven't got the money.'

"From May 25, 1962 to June 22, 1962, I received telephone calls daily from Shine and Polarmo asking me to come over to the office of the Melrose Park Plumbing Company because they wanted to see me. I kept stalling them and telling them that I didn't have the money, and

Shine then began to make regular visits to my office, always asking me where the money was and demanding it.

"A week or so after the Northlake Council—the Northlake City Council had passed the annexation ordinances and the rezoning ordinance pertaining to the property which I had in Northlake, subject to official signature. I authorized the issuance of Check No. 18910, dated June 22, 1962, payable in the amount of $5,000. I cashed this check at the LaSalle National Bank and returned to my office with it. I then authorized the issuance of Checks Nos. 18923-24-25-26-27, all payable to cash in the amount of $1,000 each.

"The next time Shine called, which was on the same day, June 22, 1962, I told him that I had some money for him. Shine came over to my office, took a look at the money I had for him in the five $1,000 checks, and said, 'Where is the rest of it? The nuts in Northlake need their money. Where is the rest?'

"I said, 'Joe, this is all I can get. You have got $5,000 in cash and you have got five $1,000 checks. Hold on to the checks for two or three days because there isn't enough money in the account to cover them. Don't cash the checks right away.'

"I then authorized the issuance of Check No. 19864 payable to myself dated August 1, 1962, in the amount of $7,500.00. I cashed the check at the LaSalle National Bank, returned to my office, and told Shine the next time he called to come over because I had some money for him. On the same day, August 1, 1962, Shine came to my office where I gave him the $7,500.00 in cash. Shine and Polarmo continued to hound me for the balance of the funds.

"So on August 9, 1962, I authorized the issuance of Check No. 20091 payable to myself dated August 9, 1962, in the amount of $7,500.00. I cashed this check at the LaSalle National Bank, returned to my office, and on the same day, August 9, 1962, handed this $7,500.00 in cash to Shine in my office.

"I now had paid Shine the $30,000 he requested. Polarmo and Shine agreed that the balance of the funds which I had to pay them amounted to $40,000 which would be paid directly to them in the form of checks. I then obtained a land loan on the Northlake property and began to go forward with the job. Shine and Polarmo continued to call me daily asking for meetings and said they wanted to see me, but I managed to stall them to the point where I could meet them on every third day.

"For approximately one month, I was not contacted by either Shine or Polarmo concerning the $40,000 which they said I still owed them. In the latter part of September, 1962, I received a call from Shine. He said, 'How are you doing, Bill, about the rest of the money? Can I come over and see you Monday morning?'

"I then attempted to stall him and said, 'No, I don't have the money, you will have to put it off until the end of the week.' Shine then said, 'What is the trouble, Bill?' I told Shine that I was having trouble opening the building loans, and that there was a lot of work involved before a building loan could be opened. I told Shine that I could not come up with the $40,000 at one time, but that I probably could stand $500.00 a week. Shine said, 'That is okay, Bill, that sounds okay to me.'

"A few days later, Shine called again and said, 'Bill, can I come to you to see you this morning?' I again stalled Shine and said, 'Not yet, Joe, I haven't got the money yet.' Shine said, 'All right, I will be in Monday.'

"These telephone conversations and visits continued to October 1, 1962 when the construction loans were actually opened. On October 1, 1962, Shine came into the office. I told him that I had some money for him. Shine said, 'Where is the money?' I said, 'Joe, have you got the invoice? Have you got something I can write a check to?' Shine said, 'No, I ain't got nothing. I will get it for you next week.'

"I then instructed my office manager, John Hutchison, to prepare a check and said, 'Joe, what do you want

the check made out to?' Shine said, 'J & S Engineering Company.'

"When Hutchison had prepared the check, I signed it and gave it to Shine. On the folowing week on or about October 8, 1962, Shine again came into the office and said, 'Where is my check, Bill?' I asked Shine who he wanted the check made out to. He said, 'J & S.' I said, 'Joe, do you have the invoices?' Shine said, 'No, I will get them for you.'

"I authorized the issuance of a check payable to J & S Engineering. I signed the check and gave it to Shine. The two aforementioned J & S Engineering checks Nos. 21184 and 21326 were both payable to J & S Engineering Company in the amount of $500.00.

"On October 15, 1962, when Shine again came into the office, he said, 'Bill, don't use that J & S name any more. Here, use the name of L & J Landscaping Service. Here is an invoice.' The invoice which Shine gave me bore the name of L & J Landscaping Service. I authorized issuance of the following checks in lot numbers in the amount of $500.00:

"21461, 21564, 21722, 21869, 21993, 22125, 22255, 22380, 22521, 22617, 22667, 22854, 22868, 23012, 23126, 23226, 23332, 23498, 23628, 23774, 23904, 24040, 24127, 24257, 24347, 24677, 24783, 24920, 25091, 25233, 25330, 25446, 25579, 25726, 26757, 26918.

"Normally, when Shine came into the office weekly to pick up his $500.00 check, I would be there to give it to him. However, on several occasions when I was absent from the office, I would leave the check in an envelope with my personal secretary, Marzetta McGillicutte, with instructions to give the check to Shine. Marzetta McGillicutte would then give the checks to Shine when he came into my office.

"During the summer of 1963, it became apparent to me that the L & J Landscaping Service was a phoney company, and I began to worry about the checks that were issued

to the company. I told Shine that we would—that we were putting too much money on the one account, and to come up with the name of a legitimate company that I could issue checks to.

"On August 21, 1963, when Shine came into the office to pick up his check, he said, 'Don't use that L & J name any more. Here, here is an invoice. Use the name Dennis Company. Use the name—you know, Dennis Company.'

"From August 21, 1963 through December 30, 1963, I authorized the issuance of the following $500.00 checks payable to the Dennis Company for which I had received an invoice from Shine. The check numbers are: 27007, 27152, 27224, 27383, 27507, 27654, 27816, 27959, 28071, 28176, 28307, 28427, 28583, 28743, 28916, 29016, 29229, 29335, 29427, 29560.

"With only one exception that I specifically recall, all of the J & S, L & J, and Dennis Company checks were picked up by Shine at my office. On one occasion I recall taking the check to Shine at the El Morocco Lounge.

"On January 14, 1964, at the insistence of Shine, I authorized the issuance of Check No. 29892 payable to the L & J Landscaping Service in the amount of $1,000 which I gave to Shine. This was the final payout which I made to Shine on the Northlake King Arthur payoff. In addition, the moneys which—in addition to the moneys, which I was forced to pay Shine to construct the King Arthur project in Northlake, Polarmo forced me to hire certain contractors on this job. They were as follows:

"Scalvitti Sewer & Water Main; Sam Cerniglia; Gail Tyle; Birchwood Plastering; Melrose Park Plastering; Melrose Park Painting Company; the Division Heating Company.

"Late in 1964, after I had been visited at my home by Special Agent John M. Walsh, Intelligence Divison, Internal Revenue Service, and where Walsh showed me certain checks which had been endorsed by Joe Amobil, Wayne Sidler, and Leo Schababy—the latter two Northlake Aldermen.

"I went to see Shine and Polarmo at Polarmo's office. I attempted to get Shine to realize that I was in serious trouble with the Internal Revenue Service. All Shine said was blank them, burn the records. Polarmo said 'You mean to tell me you showed them the checks?' I said, 'What do you mean, show them? Do you guys come from Mars or something? How do you think you show something like this? All these checks go on the books. Here, I figure you guys had some brains, and then you come in and show me a check that has been signed by Schababy. What are you people, crazy or something?'

"Polarmo said, 'Don't let those guys blank blank—they can't do anything. They have been trying to get us for years.' Shine said, 'Don't tell them anything. You know what happens to guys who talk, don't you?' I said to Polarmo and Shine, 'What is the matter with you guys? On one hand you tell me you will kill me if I don't pay you the money; on the other hand, these guys tell me they will put me in jail. But if I don't tell them that I paid you the money, that is what I am worried about.'

"Shine said, 'What are you going—' excuse me—Shine said, 'You are not going to tell them anything, are you? You haven't told them anything, have you?'

"I said, 'Joe, don't be nuts, I am not going to tell them anything.' Shine said, 'Don't you tell them anything.'

"In late 1964 or early 1965, I hired Leo Schababy, Northlake Alderman, as a lister in my Rental Division. In the course of a training conversation, I told Leo about the mess the company was in and how concerned I was over the Internal Revenue Service investigation. I told Leo that there was a $1,000 check issued on June 22, 1962 which I had given to Shine which bore his endorsement, which I thought was real dumb. Leo admitted that he had received the check from Shine, and that each of the 10 Aldermen received $1,000. He said that if the Internal Revenue Service asked him about the check, he was going to tell them that he got it for doing painting work. I

explained to Leo that my books and records did not show this check as having been paid for painting work, but he didn't seem to care.

"(Signed) "William G. Riley, signed and sworn this 28th day of November."

By Mr. Schippers:

Q. I will show you what has been previously marked as Grand Jury's Exhibit No. 112 for identification, which consists of a four-page statement, and ask if you gave that statement?

A. Yes, I did.

Q. Did you sign that?

A. Yes, I did.

Q. On or about the date it bears, the 28th day of November?

A. Yes.

Q. Will you read that statement, please.

A. "Sworn statement of William G. Riley.

"I, William G. Riley, age 39, do solemnly swear that the statements made in the following pages are true and correct to the best of my recollection.

"I further state that I have given this statement freely and voluntarily to Special Agent John M. Walsh, Intelligence Division, Internal Revenue Service.

"That no threats or promises have been made to me in connection with the statements made herein.

"In 1960, I began the business known as the Riley Management Corporation. From 1960 through 1965 I was president of the Riley Management Corporation and majority stockholder.

"In 1960, I conceived the idea of constructing multiple dwelling units along a pattern never used before in the Chicagoland area. I designated the name of this apartment project as the King Arthur Apartments, and began looking for unimproved real estate on which to build this project. I found an area suitable to my needs in Addison, Illinois.

"Over a period of months I met several times with Addison, Illinois officials concerning the project and ordinances needed from Addison before I could begin this project.

"After having spent considerable time and investing a large amount of money in this project, the Addison Zoning Board recommended to the Village Board that the project be approved. I estimated at this time that I had approximately $100,000 invested in this project, although I had not yet broken ground.

"Well, my King Arthur project was taken before the Addison Village Board for approval. The project was tabled until such time as the Sewer and Water Committee could study the project. Once the Sewer and Water Committee began looking into the project, I began to encounter real problems. In my opinion, their recommendations and asking for sewer mains and water mains were unreasonable, and not relevant to the project at hand. I refused to meet the demands of the Sewer and Water Committee. And as a result, the Committee failed to give my project their approval and recommended the Village Board not to resubdivide the property as I requested.

"I then hired an engineer to re-work the plans so that the buildings could be built on the existing subdivision plot. I then took the new plan before the Village Board to obtain building permits. During the next meeting of the Addison Village Board, Mayor Robert McHugh looked over the new layouts, saw that they were changed, and that the project could be built according to the existing subdivision, and became incensed. He asked me what I was trying to do and told me that I would never build in this town. I explained to the Village Board about the expenses which I had already incurred in attempting to get this project off the ground, and told them that unless they issued permits I would be out of business. The Board refused to issue my permits.

"While attempting to obtain the necessary permits from the Villiage of Addison, I had hired Anthony Novelli as

my building superintendent on the Addison project. Novelli had been working on a full-time basis attempting to get all the subcontractors lined up. Two or three days after they, the Village Board of Addison, had turned down my request for building permits, he came to my office in Bellwood, Illinois and told me that he had heard that if I hired the Melrose Park Plumbing Company to do the plumbing work in the Addison project, that I would be able to obtain the Addison building permits.

"I discussed this matter with my business associate, Francis Faris, who is also the attorney for the company, and with the prospect of losing the $100,000 I invested in the project—I asked Faris and Novelli to go to the Melrose Park Plumbing Company to see what they could find out. Faris and Novelli did go to the Melrose Park Plumbing Company where they met Nick Polarmo, a partner of the company. Faris discussed the King Arthur project plans with Polarmo and told him of the problems they were encountering in obtaining building permits.

"Faris also told me that he asked Polarmo what his plumbing price was per building, and all Polarmo would tell him was that his prices were in line.

"Faris told me that Polarmo told him that if he wanted to get the project started, he had to get the plumbing project. Faris tentatively agreed to this deal and told Polarmo that he had to discuss it with me, but Polarmo brushed this aside and said, 'This is a deal,' and then made a telephone call to Pat Rawlings who was a member of the Building Committee of the Village of Addison, and told Rawlings to 'get his—' it was left out—'over to Polarmo's office.

"A short time later, Rawlings showed up at Polarmo's office, and Polarmo told him to issue Riley building permits because Riley was going to start building tomorrow. Within two or three days or a week, the building permits which I had requested were issued by the Village of Addison. And hearing this, I then ordered that the project

immediately begin, and so directed Anthony Novelli. Novelli began the Addison project, and for approximately six weeks, the project ran with no problems. Novelli did obtain three or four building permits, and everything seemed to be running smoothly.

"After the project had been under way for approximately six weeks, August or September, 1962, Novelli came into my office and told me that he had been approached by an individual known as Jimmie Saviola. Novelli reported to me that Saviola had told him that they were supposed to have been taken care of in Addison. Novelli stated that he thought this meant that the Addison officials had to be taken care of, and asked me what he should do about it. I called Francis Faris into my office, discussed this matter with him, and told him (Faris) to meet with Saviola and find out what was going on. Faris and Novelli then met with Saviola, and Faris reported back to me and told me what had taken place. Faris stated that he had met Saviola at the Terrace Restaurant on Lake Street, south of Addison Road in Addison, and that Saviola said that the Addison people had to be taken care of.

"Faris told me he told Saviola he thought the deal for the Addison buildings only included the company using the Melrose Park Plumbing Company as a subcontractor.

"According to Faris, Saviola then said, 'Why didn't you tell me you were Batter's man?' Saviola then told Faris and Novelli that it was up to them to decide how much it was worth to keep the Addison officials happy. Faris and I then decided that rather than rock the boat, we would pay Saviola $1,000 a building, or a total of $13,000.

"Beginning in the late summer, early fall of 1961, and continuing over the next 18 months, I authorized the issuance of several checks totaling $13,000 payable in cash to myself or Francis Faris, which checks were cashed by Faris. Then the cash was given to Saviola, either at the Terrace Restaurant or the Countryside Liquor Store in the Addison Shopping Center.

"During this 18-month period, the Addison project construction was under way; Saviola called Faris on a number of occasions and would ask him for money. A period of time would pass—sometimes as long as two or three weeks—when Novelli would come into the office and tell me that Saviola was around again—sometimes as long as two or three weeks. That the Addison officials were around again, and asked me if I owed Saviola some more money. I would then authorize the preparation of a check which I would give to Faris to be cashed and passed on to Saviola. Check No. 13240, drawn on the account of the Riley Management Corporation at the Elmhurst National Bank, dated October 16, 1961, payable to cash in the amount of $3,000 is one of the checks which I authorized to be issued in cash, the proceeds of which Faris told me he paid to Saviola. The reverse side of this check bears the endorsement of Francis Faris, Junior, and I recognize this signature as that of Francis Faris.

"Check No. 18921, dated June 22, 1962, payable in cash in the amount of $1,000 drawn on, for account at the La Salle National Bank is one of the checks which I authorized to be issued and cashed, and the proceeds which Francis Faris gave Saviola. The endorsement on the reverse side of this check reads: 'Francis W. Faris, Junior,' is the endorsement of Francis Faris.

"I authorized Francis Faris to pay Saviola $13,000 on the Addison, King Arthur project because I was afraid that if I did not make these payments to Saviola, I would encounter problems from the Addison officials, and stood to lose more than $300,000 which I had already invested in this project.

"The initial deal which Faris had made with Polarmo in order to get the Addison building permits was for me to hire the Melrose Park Plumbing Company and to do the plumbing work on the Addison project. As the project progressed to the point of awarding other contracts, Nick Polarmo sent other subs that he wanted hired to the con-

struction site to see Novelli. Novelli would then refer the subcontractors to me. I asked them—forget that—I talked to them and told Novelli to hire them or give them the subcontract work if their price was right.

"In my opinion, the prices charged by the subcontractors referred to me by Nick Polarmo were in line. However, after they began working on their project—on the project, they were great for charging extra for work done. The pressure to hire the subcontractors referred to me by Polarmo came through Anthony Novelli on the construction site.

"Within days after construction commenced on the Addison project, I met Geno and Dan DePirro—I mean Geno Polarmo and Dan DePirro of the Melrose Park Plumbing Company, and they told me that part of the deal was that they would get the electrical and heating work on the project. I told them that no such deal had been made, and Geno said, 'Yes, it was.'

"As a result of these pressures, I did award the work on the Addison project to the Melrose Park Company on the electric, and a portion of the heating work to Division Heating, another subcontractor referred to me by Polarmo.

(Signed) "William G. Riley."

Mr. Schippers: Thank you, Mr. Riley.

Will you continue his subpoena?

The Foreman: Yes. Your subpoena is continued generally.

(Whereupon, no further proceedings were had before the Grand Jury this day.)

(In Re Grand Jury Investigation)
Grand Jury No.
65 GJ 2395

BEFORE THE FEDERAL GRAND JURY

Tuesday, November 29, 1966 2:00 o'clock p.m.

The Grand Jury reconvened pursuant to adjournment.

Present: Mr. Joseph Lamendella
Mr. David P. Schippers
Mr. Sam Betar
Assistant United States Attorneys.

WILLIAM G. RILEY, called as a witness by the Grand Jury, having been first duly sworn by the Foreman, was examined and testified as follows:

Examination.

By Mr. Joseph Lamendella:

Q. Will you state your name, please, sir?

A. William G. Riley.

Q. Are you the same William G. Riley who testified here yesterday?

A. Yes, I am.

Q. Mr. Riley, let me show you what has been marked G.J. 113.

What is that?

A. That is the statement I made to Mr. Walsh.

Q. Was that statement made on the date it shows, sir, on Page 2?

A. It was made today. If today is the 29th, it is on the same day.

Q. Did you sign that statement?

A. Yes, I did.

Q. Did you initial each page?

A. Yes.

Q. Read that.

A. "I, William G. Riley, age 39, do solemnly swear that the statements made in the following pages are true and correct to the best of my recollection. I further state that I have given this statement freely and voluntarily to Special Agent John M. Walsh, Intelligence Division, Internal Revenue Service, and that no threats or promises have

been made to me in connection with the statements made herein.

"I further state that during the years 1960 through 1965, I was the president and majority stockholder of the Riley Management Corporation, Bellwood, Illinois.

"In the summer of [illegible] I found some property contiguous to Westmont, Illinois which was suitable for another King Arthur Apartment Project. Anthony Novelli, an employee, came to me and told me that he thought he could get the necessary zoning, annexation, and permits for the project, and that he would attempt to keep the "hoods" out of it. I was now convinced that the only way I could proceed with my company operations was to break away from Nick Palermo and Joe Shine. So, I told Novelli to go ahead and see what he could do and subsequently I attended several meetings with Westmont officials and explained my proposed building plans. The officials appeared to be enthusiastic about the plans.

"Prior to beginning the Westmont King Arthur project, I received a telephone call from Joe Shine who said, 'I want to see you at the apartment, come on over.'

"I went to Shine's apartment located in the King Arthur Northlake Apartment Project, Building 27, Apartment 304, and knocked on the door. Shine opened the door, motioned for me to come in and when I got inside the room, saw that Nick Palermo was there.

"We said helo to each other and Palermo then jumped up, put his face directly into mine and said, 'What the blank do you think you are doing in Westmont? You are not going to move a shovel in Westmont without us. If you try to go out to Westmont without us, you will not only be stopped there but we will stop you cold in Northlake.'

"The Northlake King Arthur was still under construction at that time.

"Shine jumped up and said, 'Yeah, on top of that we will get the politicians on you and the building inspectors too.'

"Palermo said, 'I'll guarantee you another thing too—

you won't get any contractors to work in Westmont if you don't take us out there with you.'

"I told Nick that his company was already behind their work on the Northlake project, that they were slowing the Northlake project down and as a result of this slowdown, I was behind schedule in the opening of construction loans. I told Palermo and Shine that since they had nothing to do with the purchase of the land, the obtaining of the necessary zoning or permits and since Palermo's companies were doing such a lousy job and were in fact costing him money and because their work was inferior, I was not going to hire him on the Westmont job.

"Palermo again jumped up and said, 'You ain't making said 'You are a blank liar. Nobody does better work than I do. Nobody does it faster. Nobody does it cheaper,' and turning to Shine, he said, 'He's a blank liar.'

"I told Palermo that I just couldn't continue to build the projects with the three pipe trades that he was forcing upon me for doing such a lousy job.

"Palermo again jumped up and said, 'You ain't making a move without us. None. Nothing without us.'

"Shine then said, 'Where the hell do you think you are? You got the army and the navy behind you with us. You ain't got nothing to worry about.'

"Nick then chipped in again and said, 'You ain't going to turn a blank thing without us.'

"And at the same time Shine was gesturing in my face with a lighted cigarette as though to push it into my face.

"Palermo continued and said, 'Northlake won't go at all. Everything will stop without us. You get a plumber in Westmont and I'll stop you, you rotten little S.O.B. Where the hell do you get off with this?'

"I said, 'Look, I've had enough of this. I'm leaving. There is no sense in this kind of screaming. You guys don't even understand what I am up against. Can't you get it in your heads that I'm shaky. I am about to go under? I am broke. I just don't care any more. You are screaming for money. Don't you understand you are going to break me? If I give you Westmont, you will turn

around and say you can't do anything else until I pay you. I've got to go separately on this thing in order to keep my head above water.'

"Palermo kept saying, 'You are not going anywhere. Sit down, you punk.'

"On two or three occasions I got up to leave but Shine physically blocked the door so I could not leave, and when I did attempt to leave Shine said, 'Where the blank do you think you are going? Sit down. You are not going any place. What's this crap? You are not making a move any place without us.' Shine then said, 'Where do you think you got Westmont? You got it from us.'

"I said, 'Come on, Joe, you are nuts; I got it on my own. You had nothing to do with it. You guys are breaking me. Where the hell do you think I get this money? On trees? By the time I chase you guys around and waste my time with you, and you tell me I can build buildings in the middle of the street in Northlake and now all I've had is heat and problems. I am fed up with you. And now because of you guys working with me I can't get mortgages on account of you. If I wasn't tied up with you guys and everybody knows it, I could get mortgages any place, any time. I would have mortgage companies fighting to lend me money. But nobody wants anything from me or will give me anything because they find out you people are in with me. Do you think it is all profit? Don't you know business?'

"With this, Palermo got up screaming, again put his face into mine and said, 'That's a blank lie. Nobody is cheaper than me. Nobody does better work than me. What are you trying to do?' And all the time he was pounding the table and almost foaming at the mouth. At thi point Palermo got so mad that he said, 'What do you, what do you think, what am I.' He was so mad that he could not complete any sentence that he started and just kept going on and on like this.

"I told Nick that his plumbing work was no good; that I had leaks all over the Northlake and Addison project.

"Palermo turned to Shine and said, 'Blank, he is a

blank liar. He lies.' And then he would hiss through his mouth as though he was going to explode.

"After two hours of this continual shouting match with Palermo and Shine, I attempted to pacify them and offered to give Palermo a couple of the buildings in the Westmont project but not all of them.

"Palermo said, 'You'll give them all to me.'

"I said, 'But, Nick, you can't handle them. You don't have the people to do them. You are behind in your work now. Can't you talk about this nicely? Don't you know I'm not paying my bills? You guys are killing me. I'm having trouble opening loans, and as it stands now, and as it stands now I'm the only guy in the suburb who is selling his buildings. Don't you know I'm the only one creating sales?"

"Palermo said, 'You blank punk. It is because of us, not because of you. That's why, you stupid blank, blank. You have the army and the navy behind you.' Palermo then said, 'I'm going to bury that S.O.B. Hubley. I'm going to bury that guy.'

"In the meantime, I received a call from Nick Palermo. Palermo said, 'I want to see you at the office.' I went over to Palermo's office and he said, 'If you hire another contractor to do the work in Westmont, you are through. Nobody is going to show up on that job. I'll pull every man on Northlake and nothing will get done. Nobody will show up.'

"Rather than have both projects go down the drain, I gave Palermo the Westmont project."

Signed William G. Riley.

Q. Do you have any additions or deletions to this statement, Mr. Riley?

A. No, sir.

Mr. Lamendella: Mr. Schippers, do you have any questions?

Mr. Schippers: No questions.

Mr. Lamendella: Any member of the Grand Jury have any questions?

(No response)